

EXHIBIT 1

Transcript of Michael Holley
Conducted on October 4, 2024

1 (1 to 4)

1	3
1 IN THE UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 FOR THE DISTRICT OF NEVADA	2 ON BEHALF OF THE PLAINTIFF:
3 JAMES V. DEPPOLETO, JR., :	3 MR. PATRICK M. HARVEY
4 Individually and :	4 HUSCH BLACKWELL LLP
5 Derivatively on Behalf of :	5 511 North Broadway, Suite 1100
6 Nominal Defendant :	6 Milwaukee, Wisconsin 53202
7 Takeover Industries :	7 414.273.2100
8 Incorporated, :	8 patrick.harvey@huschblackwell.com
9 Plaintiffs, : Case No.	9
10 v. : 2:22-CV-2013-GMN-MDC	10 ON BEHALF OF THE DEFENDANTS:
11 TAKEOVER INDUSTRIES :	11 MR. DAVID M. SEXTON
12 INCORPORATED, Defendant :	12 HALL & EVANS, LLC.
13 and Nominal Defendant, :	13 1160 North Town Center Drive, Suite 330
14 MICHAEL HOLLEY, TOBY :	14 Las Vegas, Nevada 89144
15 MCBRIDE, JOSEPH PAVLIK, :	15 702.998.1022
16 TOM ZARRO, and NEXTGEN :	16 sextond@hallevans.com
17 BEVERAGES, LLC, :	17
18 Defendants. :	18
19	19 ALSO PRESENT:
20 REMOTE VIDEOTAPED DEPOSITION of MICHAEL HOLLEY	20 Tom Zarro
21 Friday, October 4, 2024	21 Mr. Jesse Castro, Videographer
22 10:04 a.m. CST	22
23 Job No.: 555102	23
24 Pages: 1 - 203	24
25 Reported By: Michelle M. Yohler, CSR, RMR, CRR	25
2	4
1 Videotaped deposition of MICHAEL HOLLEY, held	1 E X A M I N A T I O N S
2 remotely pursuant to notice before Michelle M.	2 WITNESS PAGE
3 Yohler, a Certified Shorthand Reporter, Registered	3 MICHAEL HOLLEY
4 Professional Reporter, Registered Merit Reporter,	4 By Mr. Harvey..... 7
5 Certified Realtime Reporter, and a Notary Public,	5 By Mr. Sexton..... 199
6 CSR No. 84-4531, in and for the State of Illinois.	6 By Mr. Harvey..... 199
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15	15 DEF00567..... 83
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17	17 of Labor Smart Inc..... 106
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19	19 Directors of Takeover Industries,
20	20 Inc.
21	21 DEF00009 to 11..... 114
22	22 No. 5 Convertible Note Purchase
23	23 Agreement..... 121
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Transcript of Michael Holley
Conducted on October 4, 2024

2 (5 to 8)

<p>5</p> <p>1 E X H I B I T S</p> <p>2 No. 6 Defendant Michael Holley's</p> <p>3 Responses to Plaintiff's Second</p> <p>4 Set of Interrogatories..... 126</p> <p>5 No. 7 November 8, 2022 Husch Blackwell</p> <p>6 Letter..... 131</p> <p>7 No. 8 November 22, 2022 Husch Blackwell</p> <p>8 Letter..... 135</p> <p>9 No. 9 Arizona Complaint - Takeover v.</p> <p>10 Holley..... 144</p> <p>11 No. 10 Related Party Receivable</p> <p>12 Confirmation..... 151</p> <p>13 No. 11 Spreadsheet</p> <p>14 DEF00338..... 158</p> <p>15 No. 12 January 19, 2024 Email Chain</p> <p>16 DEF00484 to 486..... 161</p> <p>17 No. 13 Declaration of Joseph Pavlik..... 171</p> <p>18 No. 14 Bank Statements</p> <p>19 DEF00197..... 178</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 (Technological issues were discussed off</p> <p>2 the record.)</p> <p>3 MR. SEXTON: Patrick, just to let you</p> <p>4 know, I got those exhibits.</p> <p>5 MR. HARVEY: Okay. Great.</p> <p>6 MICHAEL HOLLEY,</p> <p>7 called as a witness herein, having been first duly</p> <p>8 sworn, was examined and testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. HARVEY:</p> <p>11 Q Good morning, Mr. Holley.</p> <p>12 A Good morning.</p> <p>13 Q Could you please state and spell your full</p> <p>14 name, including middle name.</p> <p>15 A Yeah, it's Michael Jay Holley,</p> <p>16 M-i-c-h-a-e-l, J-a-y, H-o-l-l-e-y.</p> <p>17 Q What's your address right now, Mr. Holley?</p> <p>18 A 5137 East Armor Street, Cave Creek,</p> <p>19 Arizona 85331.</p> <p>20 Q Any plans to move in the next year or two?</p> <p>21 A No.</p> <p>22 Q Can you just briefly walk me through your</p> <p>23 education, just high school onward. I don't need</p> <p>24 to hear about middle school or anything.</p> <p>25 A Yes, I graduated high school, California</p>
<p>6</p> <p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins Media</p> <p>3 Number 1 in the videotaped deposition of Michael</p> <p>4 Holley in the matter of Deppoleto v. Takeover</p> <p>5 Industries Incorporated, et al., in the United</p> <p>6 States District Court for the District of Nevada,</p> <p>7 Case No. 2:22-cv-02013.</p> <p>8 Today's date is October 4th, 2024. The</p> <p>9 time on the video monitor is 10:04 a.m.</p> <p>10 The remote videographer today is Jesse</p> <p>11 Castro representing Planet Depos.</p> <p>12 All parties of this video deposition are</p> <p>13 attending remotely.</p> <p>14 Would counsel please voice-identify</p> <p>15 themselves and state whom they represent.</p> <p>16 MR. HARVEY: Patrick Harvey on behalf of</p> <p>17 the plaintiff.</p> <p>18 MR. SEXTON: And David Sexton on behalf of</p> <p>19 defendants.</p> <p>20 THE VIDEOGRAPHER: The court reporter</p> <p>21 today is Michelle Yohler also representing Planet</p> <p>22 Depos.</p> <p>23 The witness may now be sworn.</p> <p>24 (WHEREUPON, the witness was duly sworn.)</p> <p>25</p>	<p>8</p> <p>1 high school, in San Ramon, California in 1992.</p> <p>2 Q And any education after high school?</p> <p>3 A Yes, I went to Diablo Valley College for</p> <p>4 three years.</p> <p>5 Q And what state is that in?</p> <p>6 A California.</p> <p>7 Q Did you obtain a degree?</p> <p>8 A An arts and associates.</p> <p>9 Q Arts and associates?</p> <p>10 A AA degree, yeah.</p> <p>11 Q And what was your specialty?</p> <p>12 A That's just general studies.</p> <p>13 Q Okay. Any other education?</p> <p>14 A That's it.</p> <p>15 Q Have you ever had your deposition taken</p> <p>16 before today?</p> <p>17 A No.</p> <p>18 Q Have you ever given court testimony before</p> <p>19 today?</p> <p>20 A Yes.</p> <p>21 Q When?</p> <p>22 A In an Arizona case here in 2022.</p> <p>23 Q Was that the case involving Takeover in</p> <p>24 Arizona?</p> <p>25 A Correct.</p>

Transcript of Michael Holley
Conducted on October 4, 2024

3 (9 to 12)

<p>9</p> <p>1 Q And when was your trial -- or when was 2 your court testimony in that case? 3 A When was it? 4 Q Yes. 5 A Probably, I don't know, March of '22. 6 Q Any other court testimony other than what 7 you just described? 8 A No. 9 Q Okay. We're in a deposition today. I 10 assume you had a chance to speak with your counsel 11 beforehand, and I don't want to know the substance 12 of anything you guys talked about other than did 13 you guys have a chance to go over the deposition 14 rules, things about answering "yes" and "no," 15 things along those lines, or do I need to spend 16 time going over those again? 17 A No, that's fine. 18 Q Okay. Thank you. 19 The only one I'm going to repeat is, if 20 you don't understand one of my questions today, 21 just let me know. I'm happy to rephrase it to 22 make sure we're on the same page before you 23 answer. Okay? 24 A Sounds good. 25 Q The flip side of that though is if you</p>	<p>11</p> <p>1 Q Can you spell that for me, please? 2 A X-y-i-n-z [sic]. Like X Science, Xyience. 3 Q And when was this? Approximately is fine. 4 A 2010. 5 Q Until when? 6 A Probably 2012. 7 Q And what did you do at Xyience? 8 A I was in charge of sales for the Western 9 half of the United States. 10 Q And what type of product did Xyience make? 11 A Energy drinks. 12 Q Were they called Xyience, or did they have 13 other brand names? 14 I'm sorry, I didn't -- 15 A Yeah, they were called Xyience. Sorry. 16 Q Okay. And then after you left Xyience in 17 2012, where did you go? 18 A After that, I had my own company for 19 a while, consulting for startup beverage 20 companies. 21 Q And what company was that? Your company, 22 what was it called? 23 A My company was called Bad Boy Beverage. 24 Q Bad Boy Beverage? 25 A Yeah.</p>
<p>10</p> <p>1 answer one of my questions, I'm going to assume 2 that you understood it; is that fair? 3 A Okay. 4 Q Did you review any documents to prepare 5 for your deposition today? 6 A Yes. 7 Q What did you review? 8 A Interrogatories. 9 Q The interrogatory responses that you 10 provided? 11 A Yes. 12 Q Just yours, or did you review 13 interrogatory responses from any of the other 14 defendants in this case? 15 A Just mine. 16 Q Other than your interrogatory responses, 17 did you review any other documents to prepare for 18 your deposition today? 19 A No. 20 Q Can you walk me through your employment 21 history for, let's say, the last ten years? 22 A Well, I've been in the beverage industry 23 for 30 years now, so different companies the last 24 ten years. 25 I worked for Xyience.</p>	<p>12</p> <p>1 Q And you started this in around 2012? 2 A I think so, yeah. 3 Q And what state was -- Bad Boy Beverage, 4 what was its state of domicile? 5 A California. 6 Q Was the principal place of business in 7 California and it was registered in California, or 8 was it registered in a different state? 9 A No, I don't even think it was registered. 10 I was just consulting for different companies. 11 Q Did you have any employees other than 12 yourself? 13 A No. 14 Q How long did you run Bad Boy Beverage? 15 A Couple years. Then I got -- then I went 16 to work for IGNITE Beverage. 17 Q IGNITE spelled the usual way or... 18 A Yes. 19 Q And when did you begin working for IGNITE 20 Beverage? 21 A 2018, 2019. 22 Q And how long did you work for IGNITE 23 Beverage? 24 A Until 2020. 25 Q What was your title at IGNITE Beverage?</p>

<p>13</p> <p>1 A COO.</p> <p>2 Q And what responsibilities did you carry</p> <p>3 out as COO for IGNITE Beverage?</p> <p>4 A In charge of operations.</p> <p>5 Q What type of beverages does IGNITE</p> <p>6 beverages make?</p> <p>7 A Energy drinks, waters.</p> <p>8 Q Do they sell them nationally?</p> <p>9 A Yes, they did.</p> <p>10 Q What were the brand names?</p> <p>11 A IGNITE.</p> <p>12 Q So I want to make sure I have the timeline</p> <p>13 correct. So you ran Bad Boy Beverage from about</p> <p>14 2012 until about 2018 to 2019?</p> <p>15 A That sounds about right, yeah.</p> <p>16 Q And in that whole 2012 to 2018/'19 time,</p> <p>17 you're telling me that Bad Boy Beverage was not</p> <p>18 registered with any state?</p> <p>19 A Correct.</p> <p>20 Q Okay. From IGNITE Beverage in 2020, where</p> <p>21 did you go after that?</p> <p>22 A I started Takeover Industries.</p> <p>23 Q And you started Takeover Industries in</p> <p>24 2020 is your testimony?</p> <p>25 A We were preparing for it, and we opened it</p>	<p>15</p> <p>1 Q And what circles is he famous? In the</p> <p>2 beverage industry or something else?</p> <p>3 A He was -- I don't know, he was kind of</p> <p>4 like a young Hugh Hefner type with -- always has</p> <p>5 girls around him, and he was famous for winning</p> <p>6 millions of dollars playing poker.</p> <p>7 Q Okay. So he was the owner of IGNITE, but</p> <p>8 you and Mr. -- well, you were the COO, and</p> <p>9 Mr. McBride was the CEO of IGNITE; is that</p> <p>10 correct?</p> <p>11 A Yeah. They had IGNITE Company, and then</p> <p>12 we started the IGNITE Beverage Company. So we ran</p> <p>13 just the beverage division.</p> <p>14 Q What -- setting aside the beverage</p> <p>15 division, what did IGNITE Company do?</p> <p>16 A They were CBD products.</p> <p>17 Q So did Mr. McBride come with you to IGNITE</p> <p>18 in the 2018/2019, time frame?</p> <p>19 A Yes.</p> <p>20 Q And then you left because you said the</p> <p>21 owner was using IGNITE Company funds?</p> <p>22 A Yeah, there started to be some sort of</p> <p>23 investigation, so we didn't want to ruin our</p> <p>24 names.</p> <p>25 Q When you say "investigation," you mean SEC</p>
<p>14</p> <p>1 in the beginning of 2021.</p> <p>2 Q When did you begin -- when in 2020 did you</p> <p>3 begin preparing it?</p> <p>4 A Probably, like, October, November.</p> <p>5 Q And you said "we." Who is the "we" in</p> <p>6 that sentence?</p> <p>7 A Partner was Toby McBride.</p> <p>8 Q Did Mr. McBride work with you at IGNITE</p> <p>9 Beverage?</p> <p>10 A Yes, he did.</p> <p>11 Q What was his role at IGNITE Beverage?</p> <p>12 A He was the CEO.</p> <p>13 Q And why did you two leave IGNITE Beverage?</p> <p>14 A IGNITE got into some trouble.</p> <p>15 Q What do you mean by that?</p> <p>16 A The owner was using company funds. Was --</p> <p>17 Q What do you mean by that?</p> <p>18 A The owner was Dan Bilzerian.</p> <p>19 Q Can you spell that, please?</p> <p>20 A I don't know how to spell his last name.</p> <p>21 Q You said that like he was a known name.</p> <p>22 Is he a famous person?</p> <p>23 A Yes.</p> <p>24 Q You said Blah-zarian?</p> <p>25 A Yeah, Bilzerian. Bilzerian.</p>	<p>16</p> <p>1 investigation?</p> <p>2 A I'm not sure.</p> <p>3 Q How did you come to know about the</p> <p>4 investigation?</p> <p>5 A Employees and distributors were telling us</p> <p>6 about them.</p> <p>7 Q What month did you -- well, were you</p> <p>8 fired, or did you quit?</p> <p>9 A Quit.</p> <p>10 Q What month did you quit IGNITE?</p> <p>11 A Probably September.</p> <p>12 Q Of 2020?</p> <p>13 A Yeah.</p> <p>14 Q Wag IGNITE making the same basic products</p> <p>15 that Takeover was going to sell?</p> <p>16 A No.</p> <p>17 Q What was the distinction in your mind</p> <p>18 between the products that IGNITE was offering and</p> <p>19 what Takeover would go on to offer?</p> <p>20 A IGNITE was making, like, a Monster-style</p> <p>21 energy drink, you know, pretty normal.</p> <p>22 Q And Takeover was making gamer shots?</p> <p>23 A We started making hydrogen water.</p> <p>24 Q And, just generally speaking, you and</p> <p>25 Mr. McBride were the two sole founders of</p>

<p>17</p> <p>1 Takeover -- Takeover Industries Incorporated; is 2 that correct? 3 A Yes. 4 Q And, generally speaking, what was the idea 5 behind what Takeover Industries Incorporated was 6 going to do when you two founded it? 7 A Create a new beverage segment. 8 Q Okay. And what is the brand NXT LVL, 9 N-X-T, space, L-V-L, all caps? What is that? 10 A That was the brand name that we came up 11 with. 12 Q What year did you begin using that brand? 13 A In 2021. 14 Q Do you remember the month in 2021? 15 A Not exactly. Probably close to April, was 16 it, April, May. 17 Q By the way, you're aware that Mr. Pavlik 18 was deposed in this case, correct? 19 A Yes. 20 Q And did you sit in on his deposition? 21 A Yeah. For part it, yes. 22 Q Have you read the transcript from it? 23 A No. 24 Q What products were sold under the brand 25 name NXT LVL?</p>	<p>19</p> <p>1 A I don't remember the name of the person, 2 but they had a NXT LVL fitness water was their 3 brand. 4 Q Was it spelled the same? 5 A Very, very similar, yes. 6 Q Did they have a lawyer send you a demand 7 letter? 8 A They had a lawyer send us a letter to -- 9 when we started talking. 10 Q Let me back up. 11 You said you started Takeover in 2021. 12 What month of 2021? 13 A Maybe, like, February or March. 14 Q When did you start selling product? 15 A Couple months after. 16 Q Where were you selling product? 17 A Online. E-commerce. 18 Q So you started Takeover in February or 19 March of 2021, you started selling product a 20 couple months later, and then you got a -- you got 21 contacted in the fall of 2021 by a person who 22 claimed to have a trademark that you were 23 infringing upon. 24 Is that all right? 25 A Correct.</p>
<p>18</p> <p>1 A We had NXT LVL hydrogen water, and then we 2 came up with a NXT LVL gamer shot. 3 Q Anything else? 4 A I think that was it. 5 Q And what's a gamer shot? 6 A It's, like, a two-ounce shot. Like a 7 5-hour ENERGY drink. Supposed to give gamers 8 focus and energy. 9 Q Any other products under the NXT LVL name 10 other than hydrogen water and gamer shots? 11 A No. 12 Q Are there any products still being sold 13 under the brand name NXT LVL? 14 A No. 15 Q When did NXT LVL products stop being sold? 16 A There was a trademark dispute. 17 Q When was that? 18 A We found out in, I don't know, late '21. 19 Q How did you find out about it? 20 A The person that owned the trademark 21 reached out to us. 22 Q When you say late '21, do you mean fall or 23 winter 2021? 24 A Probably fall. 25 Q And who was this person?</p>	<p>20</p> <p>1 Q And what did you do in response to that 2 claim that there was a trademark that you were 3 infringing upon? 4 A We had a fella named Jason Tucker that was 5 working for us. 6 Q Mm-hm. 7 A And he claimed that that was his 8 expertise. 9 Q Trademarks? 10 A Yeah. 11 Q Okay. And then what happened? 12 A Well, apparently he negotiated with them 13 and then tried to strong-arm them, apparently, and 14 then I guess later in -- I don't know when it was, 15 but, yeah, they threw a cease and desist or 16 default letter against us and basically that we 17 had no -- no rights to use that trademark anymore. 18 Q When did you receive the cease and desist 19 letter? 20 A I don't know. I was frozen out of the 21 company in December of '21. 22 Q And, to your knowledge, did Takeover 23 continue selling product under the NXT LVL brand 24 name after December 2021? 25 A Yes.</p>

Transcript of Michael Holley
Conducted on October 4, 2024

6 (21 to 24)

<p>21</p> <p>1 Q How long did Takeover continue to sell 2 NXT LVL-branded products after December 2021? 3 A Close to a year. 4 Q So until about December 2022? 5 A Correct. 6 Q Why did Takeover stop selling NXT LVL 7 products in December 2022 or about December 2022? 8 A Because of the lawsuit. 9 Q What do you mean by that? 10 A The owner of the trademark sued us. 11 Q So the owner of the trademark sent a 12 demand letter -- or reached out to you, at least, 13 in the fall of 2021; Mr. Tucker basically said "We 14 don't agree"; and Takeover continued to sell under 15 the NXT LVL brand name until about December 2022, 16 correct? 17 A Sounds about right. 18 Q And then your testimony is that the owner 19 of the trademark filed a lawsuit against Takeover 20 around December of 2022? 21 A I don't know when it was filed. 22 Q Where was it filed? 23 A I don't know. 24 Q How did you come to learn of the lawsuit? 25 A After I was reinserted into the company in</p>	<p>23</p> <p>1 was that a negotiated resolution? 2 A It was a negotiated resolution. 3 Q And who signed off on that negotiated 4 resolution for Takeover? 5 A Probably Toby McBride. 6 Q Were you involved in the decision to agree 7 to that? 8 A Yeah, I believe so. 9 Q So did Takeover continue to sell NXT LVL 10 products until April or May of 2023 and then 11 stopped at the end of that three months? 12 A Yeah, I don't think we sold any more 13 products after that. 14 Q After January or February 2023? 15 A Probably after the few months, yeah. 16 Q Did you -- did Takeover still have 17 inventory at the end of that three months that had 18 NXT LVL on it? 19 A Some hydrogen water, yeah. 20 Q What did you do with that hydrogen water? 21 A I think we ended up destroying it. 22 Q Who was involved in the destruction? 23 A The warehouse, our transportation 24 warehouse. 25 Q Where was that located?</p>
<p>22</p> <p>1 November of '22. 2 Q So he filed the lawsuit in November of 3 '22, or you were already back in the company as of 4 November 2022 and the lawsuit came in later? 5 A The lawsuit was already there before I 6 came back. 7 Q Okay. So you don't know exactly when it 8 was filed, but you knew it had already been filed 9 as of November 2022? 10 A Correct. 11 Q But you don't know where it was pending? 12 A I do not. 13 Q Was the company fighting it? 14 A Yes. 15 Q And what was the resolution of that 16 lawsuit? 17 A We basically had to give up the trademark 18 and stop selling all products within three months. 19 Q And when was that? 20 A Probably January or February of '23. 21 Q So the resolution was January or 22 February 2023 and you had three months from that 23 point to stop selling? 24 A I believe so, yeah. 25 Q Now, was that a ruling from the Court, or</p>	<p>24</p> <p>1 A Georgia. 2 Q Where in Georgia? 3 A I believe Gainesville. 4 Q Approximately how much inventory are we 5 talking about that was destroyed? 6 A Probably a few pallets. 7 Q How much is a pallet worth? 8 A Probably 100 cases on a pallet. Maybe 9 \$1,200 per pallet. 10 Q And there was no gamer shots still in 11 inventory at the end of that three months? 12 A No, we sold them before that. 13 Q After you stopped using -- or Takeover 14 stopped using the NXT LVL brand name, did Takeover 15 continue to sell under any other brand name? 16 A What was that? 17 Q You just described for the last couple 18 minutes that you stopped selling NXT LVL branded 19 products at the end of that three-month period 20 that you had in 2023, correct? 21 A Correct. 22 Q At any point from when Takeover started 23 until that point when Takeover stopped selling 24 NXT LVL branded product, did Takeover sell 25 products under any other brand name other than</p>

<p>25</p> <p>1 NXT LVL?</p> <p>2 A No.</p> <p>3 Q Did Takeover consider selling under a</p> <p>4 different brand name?</p> <p>5 A No. There was multiple lawsuits being</p> <p>6 sued for, you know, probably 5 million in debt,</p> <p>7 new lawsuits coming in every week, so...</p> <p>8 Q You said there were multiple lawsuits.</p> <p>9 I'm obviously aware of this one. What other</p> <p>10 lawsuits are you describing?</p> <p>11 A There was one from the PFL, Professional</p> <p>12 Fighters League.</p> <p>13 Q Where was that lawsuit? Where was it</p> <p>14 pending, what state?</p> <p>15 A New York.</p> <p>16 Q And how much were they suing Takeover for?</p> <p>17 A Well over \$1 million.</p> <p>18 Q What was the resolution of that lawsuit?</p> <p>19 A Still pending.</p> <p>20 Q What other lawsuits were there?</p> <p>21 A The ongoing lawsuit in Arizona.</p> <p>22 Q You said that's still going?</p> <p>23 A Correct.</p> <p>24 Q Any other lawsuits?</p> <p>25 A None other. Multiple that were -- put us</p>	<p>27</p> <p>1 consider trying to sell under a different brand</p> <p>2 name at that point; is that correct?</p> <p>3 A Yeah, correct.</p> <p>4 Q Why not?</p> <p>5 A Well, we're obviously being sued for</p> <p>6 multiple millions of dollars by your client, so</p> <p>7 there was no money in the bank accounts, there was</p> <p>8 no customers left. Once we got rid of Jason</p> <p>9 Tucker, he froze us out of our websites, our</p> <p>10 Shopify, our -- everything that we had, it was all</p> <p>11 locked up and gone.</p> <p>12 Q Does Takeover have any employees today?</p> <p>13 A I believe I'm still listed as a director,</p> <p>14 Tom Zarro, and Joseph Pavlik.</p> <p>15 Q What's Tom Zarro's role?</p> <p>16 A I guess he's the interim CEO.</p> <p>17 Q How long has he been the interim CEO?</p> <p>18 A I guess probably a year.</p> <p>19 Q And you said Mr. Pavlik as well?</p> <p>20 A Yeah.</p> <p>21 Q What's is role?</p> <p>22 A He's the director.</p> <p>23 Q Any other employees or directors that</p> <p>24 you're aware of for Takeover today?</p> <p>25 A No.</p>
<p>26</p> <p>1 in default and, you know, warned us that they were</p> <p>2 going to sue us, yeah.</p> <p>3 Q Describe what you mean by that. I'm not</p> <p>4 sure I follow.</p> <p>5 A I don't know, other companies that</p> <p>6 Takeover owed money to.</p> <p>7 Q Like who?</p> <p>8 A There was a debt to Boost Transportation</p> <p>9 for about \$100,000. There was a can company</p> <p>10 called Gamer Packaging, I believe it was called,</p> <p>11 that they were owed, I don't know, about 50-,</p> <p>12 \$60,000.</p> <p>13 Q Did either of those end up in lawsuit, or</p> <p>14 they just sent demand letters?</p> <p>15 A Yeah, no lawsuits yet.</p> <p>16 Q So by the time you -- or Takeover stopped</p> <p>17 selling under the NXT LVL brand name -- and,</p> <p>18 again, that was probably April/May 2023; is that</p> <p>19 about the right time frame?</p> <p>20 A I believe so, yeah.</p> <p>21 Q By April or May of 2023, this lawsuit that</p> <p>22 we're in and talking about today, that lawsuit had</p> <p>23 already been pending, correct?</p> <p>24 A Correct.</p> <p>25 Q And you told me that Takeover did not even</p>	<p>28</p> <p>1 Q At its largest, how many employees did</p> <p>2 Takeover have?</p> <p>3 A Probably five or six.</p> <p>4 Q When was that?</p> <p>5 A I don't know exactly. I was obviously not</p> <p>6 in the company since December of '21.</p> <p>7 Q Walk me through your roles with the</p> <p>8 company starting with the founding. And by that I</p> <p>9 mean, what -- if you were a CEO or if you were a</p> <p>10 director or if you were both, can you give me a</p> <p>11 timeline of your positions at the company, at</p> <p>12 Takeover?</p> <p>13 A Yeah, when we formed the company, Toby and</p> <p>14 I were the only two directors. He took the CEO</p> <p>15 position, I was a COO.</p> <p>16 Q So this was in the February and March 2021</p> <p>17 time frame?</p> <p>18 A Yes.</p> <p>19 Q Okay. And at that time, were you -- in</p> <p>20 addition to being the chief operating officer, did</p> <p>21 you also have a director position --</p> <p>22 A Yes.</p> <p>23 Q -- or an officer position?</p> <p>24 What was your director position?</p> <p>25 A Just director.</p>

<p>29</p> <p>1 Q And did you consider yourself a board 2 member of Takeover at that point? 3 A I would assume so, yeah. 4 Q As COO, what responsibilities did you 5 have? 6 A I did all the internal operations. So I 7 oversaw production and internal processes. 8 Q Anything else? 9 A That's about it. 10 Q How long did you hold the COO position? 11 You started in February or March of 2021; when did 12 you stop holding the COO position? 13 A Well, I was removed -- wrongfully removed 14 in December of '21. 15 Q From the February/March 2021 through 16 December 2021 time frame, what compensation did 17 you receive from Takeover? 18 A We were paid 5,000 a week. 19 Q Who is the other person when you said 20 "we"? 21 A Toby McBride. 22 Q Did you and Mr. McBride provide the 23 capital to start Takeover? 24 A Some of it, yes. 25 Q How much?</p>	<p>31</p> <p>1 received 5,000 a week from Takeover from 2 February/March 2021 until when you were removed in 3 December 2021, and you got your compensation for 4 your COO role, correct? 5 A Correct. 6 Q Did you receive additional compensation 7 for your role on the board of Takeover? 8 A Yes. 9 Q How much did you receive for your board 10 member role? 11 A There was not a set amount. It was when 12 we would raise capital, we would take a small 13 percentage of it. 14 Q What was the percent? 15 A I don't recall. 16 Q Is there a document that set forth the 17 percentage that you were allowed to take as a 18 board member when you raised capital? 19 A I don't believe so. 20 Q Did you disclose to your investors that 21 the board members would be taking a percentage of 22 any money that you raised? 23 A I don't believe so. 24 Q And, as you sit here today, you don't 25 remember what percentage it was?</p>
<p>30</p> <p>1 A About 250,000. 2 Q Each? 3 A Together. 4 Q Who else provided the capital? 5 A We had borrowed money from a few 6 investors. 7 Q Who were those? 8 A I don't recall. 9 Q None of them? 10 A No. 11 Q Were these individual investors or 12 corporate investors? 13 A Individuals. 14 Q How much capital did you start the company 15 with? 16 A I think that we maybe raised about 100-, 17 150,000. 18 Q So you and Mr. McBride each put in 19 125,000, and then you had other investors that, 20 combined, put in a total of about 150,000? 21 A That's about right. 22 Q But you don't remember a single other 23 investor? 24 A No. 25 Q So you received -- you and Mr. McBride</p>	<p>32</p> <p>1 A No, I don't. 2 Q Was it closer to 5 percent or closer to 3 50 percent? 4 A Closer to 5. 5 Q And was this tracked on the company books, 6 these amounts that you were taking from the 7 investors? 8 A Yes. 9 Q Now, you said you were forced out in 10 December of 2021 from your role as COO, correct? 11 A Correct. 12 Q And were you forced off of the board at 13 that point as well in December 2021? 14 A Yes, I was wrongfully removed from the 15 board. 16 Q Okay. And was that at the same time 17 frame, December 2021? 18 A Yes. 19 Q Were you eventually reinstated to your 20 role as COO? 21 A Yes. 22 Q When was that? 23 A Well, in Takeover, I guess I was just 24 reinstated as a director. 25 Q Okay. So you never regained your role as</p>

<p>33</p> <p>1 COO of Takeover, correct?</p> <p>2 A Correct.</p> <p>3 Q When were you reinstated on the board of</p> <p>4 Takeover?</p> <p>5 A November '22.</p> <p>6 Q So you were not on the board of Takeover</p> <p>7 at any point from December 2021 through</p> <p>8 November 2022; is that correct?</p> <p>9 A Correct.</p> <p>10 Q In terms of any -- well, let me back up.</p> <p>11 Strike that.</p> <p>12 You said that when you were on the board,</p> <p>13 when you raised capital, the board members would</p> <p>14 take a percentage of the capital that was raised,</p> <p>15 correct?</p> <p>16 A From time to time. Not every time.</p> <p>17 Q I know you weren't on the board between</p> <p>18 December '21 through November 2022, but do you</p> <p>19 know whether the board members continued that</p> <p>20 practice for any investments that came in in</p> <p>21 between December 2021 and November 2022?</p> <p>22 A I do not.</p> <p>23 Q But your testimony is that the -- when you</p> <p>24 were on the board, when you did take a percentage</p> <p>25 of capital that was raised, that was noted on the</p>	<p>35</p> <p>1 A He started as a consultant in, I think,</p> <p>2 maybe April.</p> <p>3 Q Of what year?</p> <p>4 A '21.</p> <p>5 Q Did he begin interfacing with this company</p> <p>6 that you're talking about in April 2021, or was</p> <p>7 this later?</p> <p>8 A Probably within a month or so.</p> <p>9 Q And this company, was it an accounting</p> <p>10 firm, or what else can you tell me about it?</p> <p>11 A Yeah, I believe that's all they did.</p> <p>12 Q You said you were responsible for the</p> <p>13 Takeover bank account, correct?</p> <p>14 A Yeah. Paid bills and things, yeah.</p> <p>15 Q Were you the only one who had access or</p> <p>16 authority to use the Takeover bank account?</p> <p>17 A Yeah.</p> <p>18 Q And when to when were you the sole person</p> <p>19 who had access and authority to use the Takeover</p> <p>20 bank account?</p> <p>21 A From the inception of the bank account to</p> <p>22 December of '21.</p> <p>23 Q And was it your responsibility then to</p> <p>24 send whatever bank statements -- this company that</p> <p>25 Mr. Tucker was working with, was it your</p>
<p>34</p> <p>1 company's books, correct?</p> <p>2 A I believe so, yes.</p> <p>3 Q Did you control the company's books during</p> <p>4 the time that you were on the board?</p> <p>5 A I ran the bank account, but we had other</p> <p>6 people that did our books for us.</p> <p>7 Q Explain that a little bit more, please.</p> <p>8 A So I paid the bills and things like that,</p> <p>9 but then we had another company that did all of</p> <p>10 our QuickBooks and all of our filings, I believe.</p> <p>11 Q What company was that?</p> <p>12 A I don't recall their name.</p> <p>13 Q Who was responsible for that relationship?</p> <p>14 A In what way?</p> <p>15 Q I'm sorry, what?</p> <p>16 A In what way?</p> <p>17 Q Well, you can't recall the company's name,</p> <p>18 so I'm gathering you didn't interface with that</p> <p>19 company a whole lot. I'm gathering somebody like</p> <p>20 Mr. McBride, for example, was the primary point of</p> <p>21 contact for that relationship, but you tell me if</p> <p>22 I'm wrong.</p> <p>23 Am I right about that?</p> <p>24 A Jason Tucker.</p> <p>25 Q When did Mr. Tucker join Takeover?</p>	<p>36</p> <p>1 responsibility to print or email the bank</p> <p>2 statements so that they could review them?</p> <p>3 A No, they had access.</p> <p>4 Q When did Mr. -- you said Mr. Tucker was a</p> <p>5 consultant initially around the April 2021 time</p> <p>6 frame. When did he formally join Takeover?</p> <p>7 A November '21.</p> <p>8 Q And what roles did he have when he</p> <p>9 formally joined?</p> <p>10 A Made him the president.</p> <p>11 Q Was he on the board at that point?</p> <p>12 A Yeah, the end of November.</p> <p>13 Q How long did Mr. Tucker remain president</p> <p>14 of Takeover from when he first started in November</p> <p>15 of 2021?</p> <p>16 A Until we removed him in January or</p> <p>17 February of '23.</p> <p>18 Q So from November 2021 through January or</p> <p>19 February of 2023, Mr. Tucker was Takeover's</p> <p>20 president, correct?</p> <p>21 A Correct.</p> <p>22 Q And was he on -- was Mr. Tucker on the</p> <p>23 board of Takeover that entire time, from November</p> <p>24 2021 through January/February 2023?</p> <p>25 A I believe so, yes. He was the only one</p>

<p>37</p> <p>1 that had access to the bank accounts after that.</p> <p>2 Q What is Labor Smart?</p> <p>3 A Labor Smart is the parent company of</p> <p>4 Takeover.</p> <p>5 Q Was that always the case?</p> <p>6 A We originally started Takeover, and then</p> <p>7 Labor Smart bought Takeover.</p> <p>8 Q When did Labor Smart buy Takeover?</p> <p>9 A Probably March or April of '21.</p> <p>10 Q So just a couple months after you and</p> <p>11 Mr. McBride founded it?</p> <p>12 A Yeah.</p> <p>13 Q And what compensation did you receive from</p> <p>14 Labor Smart when --</p> <p>15 A Um --</p> <p>16 Q -- Takeover?</p> <p>17 A Shares of Labor Smart.</p> <p>18 Q How many?</p> <p>19 A 6.8 billion and 51 preferred shares.</p> <p>20 Q And did you and Mr. McBride split those</p> <p>21 6.8 billion shares?</p> <p>22 A I received 2 billion, he received</p> <p>23 2 billion, and then Joseph Pavlik received</p> <p>24 2 billion.</p> <p>25 Q What happened to the other -- you said</p>	<p>39</p> <p>1 A Not all of them.</p> <p>2 Q How many does it have today?</p> <p>3 A I think 100 million.</p> <p>4 Q What happened to the other 700 million?</p> <p>5 A Used to raise money or pay people.</p> <p>6 Q Walk me through when those left Takeover's</p> <p>7 name.</p> <p>8 A I don't exactly remember.</p> <p>9 Q When's the first time you remember some of</p> <p>10 those 800 being used -- or 700? I'm sorry.</p> <p>11 A I don't recall.</p> <p>12 Q Who controls the 100 million in Takeover</p> <p>13 today?</p> <p>14 A Takeover does.</p> <p>15 Q And how much are those shares worth today</p> <p>16 approximately?</p> <p>17 A Maybe 200,000.</p> <p>18 Q Do you still have your 2 billion shares?</p> <p>19 A Yes. Most of them.</p> <p>20 Q How many do you have?</p> <p>21 A I think 1.9 million -- billion.</p> <p>22 Q How much are those worth approximately?</p> <p>23 A Do some math on that one.</p> <p>24 About \$3 million.</p> <p>25 Q And you said it's part of the sale. Not</p>
<p>38</p> <p>1 6.8 billion. What happened to the other</p> <p>2 800 million?</p> <p>3 A 800 million went in Takeover's name.</p> <p>4 Q What were they worth at the time?</p> <p>5 A I'm not sure.</p> <p>6 Q You sold the company without knowing how</p> <p>7 much the shares were worth?</p> <p>8 A The share worth was volatile. I mean,</p> <p>9 it's an OTC pink market, so -- and it would</p> <p>10 fluctuate every single day so...</p> <p>11 Q And OTC pink markets, what's that mean?</p> <p>12 A It's the trading platform. It's called --</p> <p>13 OTC stands for over-the-counter.</p> <p>14 Q And what's pink?</p> <p>15 A Pink just means a lower end of the market,</p> <p>16 I believe. It's for, like, penny stocks, if you</p> <p>17 will.</p> <p>18 Q So you received 2 billion shares,</p> <p>19 Mr. Holley -- or Mr. McBride received 2 billion</p> <p>20 shares, Mr. Pavlik received 2 billion shares, and</p> <p>21 then you said Takeover received 800 million shares</p> <p>22 in Labor Smart; is that correct?</p> <p>23 A Correct.</p> <p>24 Q Does Takeover still have the 800 million</p> <p>25 shares?</p>	<p>40</p> <p>1 only did Takeover receive 6.8 billion shares, you</p> <p>2 added that they also -- or Takeover received 51</p> <p>3 preferred shares of Labor Smart, correct?</p> <p>4 A Yes.</p> <p>5 Q Now, were those 51 preferred shares, did</p> <p>6 those go to Takeover, or did they go to you,</p> <p>7 Mr. McBride, and/or Mr. Pavlik?</p> <p>8 A Correct. We each got 17.</p> <p>9 Q The individuals each got 17 preferred</p> <p>10 shares?</p> <p>11 A Correct.</p> <p>12 Q Do you still have your 17?</p> <p>13 A I do.</p> <p>14 Q How much are those worth?</p> <p>15 A 17 cents.</p> <p>16 Q Why are the preferred shares worth so much</p> <p>17 less?</p> <p>18 A They're just for voting rights.</p> <p>19 Q Okay. Do you know whether Mr. McBride</p> <p>20 still has his 2 billion shares of Labor Smart?</p> <p>21 A He does not.</p> <p>22 Q He does not have any of it or...</p> <p>23 A All gone.</p> <p>24 Q What happened to his?</p> <p>25 A Jason Tucker talked him into returning</p>

Transcript of Michael Holley
Conducted on October 4, 2024

11 (41 to 44)

<p>41</p> <p>1 1.5 billion of them to the company.</p> <p>2 Q When you say "the company," you mean</p> <p>3 Takeover or Labor Smart?</p> <p>4 A Labor Smart.</p> <p>5 Q What was Mr. Tucker's role with regard to</p> <p>6 Labor Smart?</p> <p>7 A I believe he was a director.</p> <p>8 Q Why did Mr. Holley [sic] -- why was he</p> <p>9 convinced to turn over 1.5 billion to Labor Smart?</p> <p>10 A He was saying it was to -- I guess they --</p> <p>11 I wasn't there when it happened, but I believe it</p> <p>12 was -- he was supposed to pay a debt. The company</p> <p>13 owed shares or something to some entity.</p> <p>14 Q And so, to your knowledge, Mr. McBride</p> <p>15 turned those over willingly in exchange for</p> <p>16 nothing?</p> <p>17 A I believe so. That he was going to be</p> <p>18 repaid eventually, I guess.</p> <p>19 Q Were you approached about returning your</p> <p>20 shares?</p> <p>21 A Was I approached about returning my</p> <p>22 shares? Yes.</p> <p>23 Q And you said no?</p> <p>24 A Correct.</p> <p>25 Q How about Mr. Pavlik; to your knowledge,</p>	<p>43</p> <p>1 Q I'm not sure I'm tracking there. So let</p> <p>2 me back up.</p> <p>3 Before Labor Smart purchased Takeover,</p> <p>4 what was Labor Smart's line of business or lines</p> <p>5 of business?</p> <p>6 A I believe they were, like, a labor</p> <p>7 company. So they were, like, a temp agency or</p> <p>8 something.</p> <p>9 Q Okay. And the owner was Ryan Schadel.</p> <p>10 A Correct.</p> <p>11 Q And that's S-c-h-a-d-e-l, if I'm</p> <p>12 correct -- if I'm remembering correctly, true?</p> <p>13 A Shade-el, kind of, yeah.</p> <p>14 Q Okay. So Labor Smart was in a totally</p> <p>15 different industry, and it was owned by Ryan</p> <p>16 Schadel, correct?</p> <p>17 A Correct.</p> <p>18 Q How did the discussions between you and</p> <p>19 Mr. McBride and Mr. Schadel begin?</p> <p>20 A I don't know; we were introduced by</p> <p>21 somebody.</p> <p>22 Q Okay. And where was this introduction?</p> <p>23 A On the phone.</p> <p>24 Q And what was the -- "Hey, we'd like to</p> <p>25 talk" -- "We'd like to talk to you" -- "We have</p>
<p>42</p> <p>1 does he still have his 2 billion shares or some</p> <p>2 portion of them?</p> <p>3 A No, I believe he had maybe 100 million</p> <p>4 shares. I'm not sure.</p> <p>5 Q And in terms of Labor Smart, how did the</p> <p>6 discussions between Labor Smart and Takeover, how</p> <p>7 did those come about in March or April 2021?</p> <p>8 A How did they come about?</p> <p>9 Q Sure. And I can -- this is one of those,</p> <p>10 if you don't understand my question, just ask me;</p> <p>11 I'm happy to clarify.</p> <p>12 So you and Mr. McBride start this company,</p> <p>13 Takeover, in early 2021; you're just getting it</p> <p>14 started; and then all of a sudden, you sell it</p> <p>15 within a month or two or three. What happened in</p> <p>16 that time frame?</p> <p>17 A So, yeah, we were trying to raise money to</p> <p>18 get the company started, and Labor Smart was a</p> <p>19 publicly traded company with a -- I believe a</p> <p>20 labor business in it, and the owner of that</p> <p>21 company thought it was -- it would be a good fit</p> <p>22 to purchase us and then they would give us the</p> <p>23 controlling stake of Labor Smart.</p> <p>24 Q Of Labor Smart or Takeover?</p> <p>25 A Labor Smart.</p>	<p>44</p> <p>1 this Labor Smart, which is a temp agency, they'd</p> <p>2 like to talk to you"? What led you guys to be</p> <p>3 interested in talking to a temp agency company?</p> <p>4 A Just because they were publicly traded.</p> <p>5 Q Okay. And what was discussed during that</p> <p>6 first discussion?</p> <p>7 A I don't recall.</p> <p>8 Q Were there a number of discussions before</p> <p>9 the sale actually went through?</p> <p>10 A Yes.</p> <p>11 Q And this is, I think, what you told me was</p> <p>12 that you were trying to raise money for Takeover,</p> <p>13 correct?</p> <p>14 A Mm-hm.</p> <p>15 Q You have to say "yes" or "no."</p> <p>16 A Oh. Yes.</p> <p>17 Q And Mr. Schadel's pitch to you was that if</p> <p>18 you sell Takeover to Labor Smart, I, Mr. Schadel,</p> <p>19 will give you -- meaning you, Mr. McBride, and</p> <p>20 perhaps Mr. Pavlik -- control of Labor Smart; is</p> <p>21 that what you told me?</p> <p>22 A Correct.</p> <p>23 Q And what was his explanation for wanting</p> <p>24 to give a temp agency company -- or give you</p> <p>25 control over a temp agency company when you guys</p>

<p>45</p> <p>1 were in a beverage company?</p> <p>2 A Basically it was to be able to move the</p> <p>3 stock. Put a, you know, performing company,</p> <p>4 beverage company into his -- his trading platform,</p> <p>5 I guess.</p> <p>6 Q I'm not sure I'm tracking you there. Can</p> <p>7 you say a little more on that?</p> <p>8 A So, like, it would be if, you know, we</p> <p>9 bought a -- like, a shell company, if you will.</p> <p>10 This wasn't a shell company, but it's a chance to</p> <p>11 be a trading company. You can raise money through</p> <p>12 selling shares of the company on the open market.</p> <p>13 Q So you're saying Takeover, instead of</p> <p>14 having to get individual investors, this was</p> <p>15 attractive to you because you would be able to</p> <p>16 raise money through a public offering; is that --</p> <p>17 A Yeah. Thank you.</p> <p>18 Q Okay. So I understand why -- well, I</p> <p>19 think I understand why that was attractive for you</p> <p>20 and Mr. McBride and Mr. Pavlik. Why was</p> <p>21 Mr. Schadel interested in that deal?</p> <p>22 A Well, he still owned quite a few shares</p> <p>23 himself.</p> <p>24 Q Of Takeover?</p> <p>25 A Of Labor Smart.</p>	<p>47</p> <p>1 effect?</p> <p>2 A I guess we never had a, like, official</p> <p>3 public offering, but the -- it would bolster the</p> <p>4 share price of Labor Smart. So once -- once</p> <p>5 Labor Smart purchased Takeover, the Labor Smart</p> <p>6 shares -- share price went up. And then if the</p> <p>7 company sold shares of Labor Smart, they would be</p> <p>8 worth more money.</p> <p>9 Q Okay. Now, Mr. Schadel was the owner of</p> <p>10 Labor Smart, correct?</p> <p>11 A Correct.</p> <p>12 Q But he, as part of this deal, was going to</p> <p>13 give control over Labor Smart to you and</p> <p>14 Mr. McBride and Mr. Pavlik, correct?</p> <p>15 A Correct.</p> <p>16 Q After that purchase, was Labor Smart in</p> <p>17 the temp agency business at all, or was its sole</p> <p>18 ongoing business Takeover?</p> <p>19 A Yeah, it sold its Labor Smart -- or labor</p> <p>20 business to Mr. Schadel.</p> <p>21 Q And did he continue to run that under some</p> <p>22 other company name?</p> <p>23 A I believe so, just not publicly, yeah.</p> <p>24 Q So when the deal went through, did you</p> <p>25 take on a formal role with Labor Smart?</p>
<p>46</p> <p>1 Q So I'm still not quite sure I'm</p> <p>2 understanding. Well, let me back up.</p> <p>3 To your knowledge, Takeover was never a</p> <p>4 publicly traded company, true?</p> <p>5 A Correct.</p> <p>6 Q So Takeover never had the legal right to</p> <p>7 raise funds through a publicly traded platform,</p> <p>8 true?</p> <p>9 A True.</p> <p>10 Q Okay. So even if Labor Smart was a</p> <p>11 publicly traded company, how was any money that</p> <p>12 Labor Smart raised through a public offering, how</p> <p>13 was that going to be beneficial with Takeover?</p> <p>14 A That's why Labor Smart purchased Takeover.</p> <p>15 Q And what do you mean by that? I'm not</p> <p>16 following.</p> <p>17 A So Labor Smart bought Takeover. So now --</p> <p>18 Q That --</p> <p>19 A -- so now it owned -- Labor Smart now</p> <p>20 owned a beverage company.</p> <p>21 Q So did then Labor Smart start trying to</p> <p>22 raise funds on the public market by saying, "We</p> <p>23 now have a beverage company. We'd like you, the</p> <p>24 public, to invest in Labor Smart so that we can</p> <p>25 give that money to Takeover," or words to that</p>	<p>48</p> <p>1 A Yes.</p> <p>2 Q What was your role with Labor Smart?</p> <p>3 A I guess I was a director.</p> <p>4 Q Just a regular director or chairman or...</p> <p>5 A Just a director, yeah.</p> <p>6 Q Who were the other directors of</p> <p>7 Labor Smart at that time?</p> <p>8 A Initially, it was just Joseph Pavlik, and</p> <p>9 then a few months later, he added Toby McBride and</p> <p>10 myself.</p> <p>11 Q When was -- when were your -- strike that.</p> <p>12 You said a few months later, yourself and</p> <p>13 Mr. McBride were added as directors, correct?</p> <p>14 A Correct.</p> <p>15 Q When was that? You said a few months</p> <p>16 later, but approximately when?</p> <p>17 A Maybe May '21.</p> <p>18 Q So for a while, Mr. Pavlik was the only</p> <p>19 director on Labor Smart's board?</p> <p>20 A Yes.</p> <p>21 Q Are you still a board member of</p> <p>22 Labor Smart?</p> <p>23 A Yes.</p> <p>24 Q Who are the other board members today?</p> <p>25 A Today you have Tom Zarro, Manny Pacquiao,</p>

<p>49</p> <p>1 Luis Sequiera.</p> <p>2 Q Can you spell that for me?</p> <p>3 A S-e-q-u-i-e-r-a.</p> <p>4 Q Anyone else?</p> <p>5 A Michael Araghi.</p> <p>6 Q Can you spell that?</p> <p>7 A A-r-a-g-h-i.</p> <p>8 Q So there's -- well, anyone else?</p> <p>9 A As of right now, we have Tom Fitzgerald,</p> <p>10 Sr.</p> <p>11 Q Why did you phrase it like that, "as of</p> <p>12 right now"?</p> <p>13 A Well, it's just we're -- we have our</p> <p>14 annual meeting next week, so all the directors are</p> <p>15 up for -- up for another term, I guess, if you</p> <p>16 will.</p> <p>17 Q When did Mr. Zarro join the Labor Smart</p> <p>18 board?</p> <p>19 A I want to say about June of '23.</p> <p>20 Q How about Mr. Pacquiao?</p> <p>21 A Same time.</p> <p>22 Q How about Mr. Sequiera?</p> <p>23 A Same time.</p> <p>24 Q Mr. Araghi?</p> <p>25 A Just a few months ago.</p>	<p>51</p> <p>1 removed?</p> <p>2 A He just -- he was not -- he stopped</p> <p>3 working for the company, and so we -- was just not</p> <p>4 renewed as a board member.</p> <p>5 Q You said he was working for Labor Smart.</p> <p>6 What do you mean "he was working for"? What was</p> <p>7 his position?</p> <p>8 A I believe he was a board member. Maybe</p> <p>9 president. I'm not sure.</p> <p>10 Q Did he have, for instance, a CEO role as</p> <p>11 well or president role or...</p> <p>12 A I don't recall.</p> <p>13 Q So as of the purchase -- the Labor Smart</p> <p>14 purchase of Takeover in March/April 2021, I think</p> <p>15 you said shortly thereafter, Mr. Schadel took the</p> <p>16 temp agency business and began running it through</p> <p>17 some other entity other than Labor Smart, correct?</p> <p>18 A Correct.</p> <p>19 Q So other than the Takeover beverage</p> <p>20 business, was Labor Smart doing anything else at</p> <p>21 that point when Mr. Schadel -- or Schadel took the</p> <p>22 temp agency work away from Labor Smart?</p> <p>23 A No.</p> <p>24 Q And from that point until today, has</p> <p>25 Labor Smart been in any business other than the</p>
<p>50</p> <p>1 Q And Mr. Fitzgerald?</p> <p>2 A About that June time as well.</p> <p>3 Q When did Mr. Pavlik stop being a director</p> <p>4 of Labor Smart?</p> <p>5 A I'd say, like, September of '21.</p> <p>6 Q Why did he step down? Or was he forced</p> <p>7 out?</p> <p>8 A Yeah, he was forced out by Jason Tucker.</p> <p>9 Q When did Mr. McBride stop being a member</p> <p>10 of the Labor Smart board?</p> <p>11 A I believe in June.</p> <p>12 Q Of?</p> <p>13 A '23.</p> <p>14 Q Why did he stop being a director or board</p> <p>15 member?</p> <p>16 A He resigned from the company.</p> <p>17 Q Why?</p> <p>18 A Because he wanted to pursue other avenues.</p> <p>19 Q From when to when was Mr. Tucker a board</p> <p>20 member of Labor Smart?</p> <p>21 A Probably late '21 to -- I think he was</p> <p>22 removed in October of last year.</p> <p>23 Q 2023?</p> <p>24 A Yeah.</p> <p>25 Q You said he was removed. How was he</p>	<p>52</p> <p>1 beverage business?</p> <p>2 A No. Pretty much that's it.</p> <p>3 Q Okay. And other than Takeover,</p> <p>4 Labor Smart's only business has been with Next</p> <p>5 Gen, correct?</p> <p>6 A Correct.</p> <p>7 Q And that's a defendant in this lawsuit as</p> <p>8 well, correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. So to the extent that Labor Smart's</p> <p>11 stock holds value today, that's solely dependent</p> <p>12 on the success or anticipated success of Next Gen,</p> <p>13 correct?</p> <p>14 A Not any longer, no.</p> <p>15 Q And what do you mean by that?</p> <p>16 A Labor Smart owns a couple other</p> <p>17 subsidiaries now, too.</p> <p>18 Q Which subsidiaries?</p> <p>19 A Illumination Brands.</p> <p>20 Q What is Illumination Brands?</p> <p>21 A It's a company that owns a distribution</p> <p>22 company in Colorado.</p> <p>23 Q Beverage distribution?</p> <p>24 A Yes.</p> <p>25 Q What else does Labor Smart own other than</p>

<p>53</p> <p>1 Next Gen and Illumination Brands? 2 A Next Gen Holding Company. 3 Q What's the distinction between Next Gen 4 Holding Company and the Next Gen that's in this 5 lawsuit? 6 A Next Gen Holdings is just an IP company. 7 Q Did the Next Gen that's in this lawsuit 8 initially own the IP for Next Gen? 9 A No, Next Gen Holdings was created first. 10 Q Does Labor Smart own anything else other 11 than Illumination Brands, Next Gen Holdings, and 12 the Next Gen in this lawsuit? 13 A Just recently started Elevate Health & 14 Wellness. 15 Q What is that? 16 A It's a new idea for a company to sell 17 supplements. 18 Q In beverage format or some other format? 19 A It's regular supplements. 20 Q Was Illumination Brands a company that 21 Labor Smart purchased, or was it a company that 22 Labor Smart created? 23 A Purchased. 24 Q And when was that? 25 A August.</p>	<p>55</p> <p>1 MR. HARVEY: We've been going for not 2 quite an hour and a half, but does anyone need a 3 break to use the restroom or anything? This is 4 not an endurance contest. 5 MS. REPORTER: I could use five minutes, 6 if you don't mind. 7 MR. HARVEY: Sure. Why don't we go off 8 the record and we'll get back on -- it's 11:23 my 9 time, so 11:30 my time and, what, 9:30 Pacific 10 Time. Does that sound good? 11 THE VIDEOGRAPHER: We are going off the 12 record. The time is 11:23 a.m. 13 (WHEREUPON, a recess was had.) 14 THE VIDEOGRAPHER: We are going back on 15 the record. The time is 11:31 a.m. 16 BY MR. HARVEY: 17 Q So I think I asked you this before. I 18 just want to close the loop. Other than director 19 or board member at Labor Smart, have you held any 20 other positions at Labor Smart, be it COO, 21 president, anything like that? 22 A I was an interim CEO for about a month. 23 Q When was that? 24 A In, I think, January or February of '23. 25 Q So right after this lawsuit was filed?</p>
<p>54</p> <p>1 Q Of 2024? 2 A Yes. 3 Q And Next Gen Holdings you said was created 4 before the Next Gen in this lawsuit. When was 5 Next Gen Holdings created? 6 A About a month before Next Gen Beverages. 7 Q And that was something that Labor Smart 8 created, not bought, correct? 9 A Correct. 10 Q Has Labor Smart ever tried to force you 11 off the board? 12 A Has Labor Smart ever done -- what do you 13 mean? 14 Q Well, for instance, you said Mr. Tucker 15 was removed from the Labor Smart board, correct? 16 A Correct. 17 Q In other words, he didn't leave 18 voluntarily, correct? 19 A I guess so. 20 Q Had you ever been threatened with removal 21 from the Labor Smart board? 22 A Yeah, they actually tried to remove me, 23 but it was done improperly. 24 Q And when was this? 25 A December of '21.</p>	<p>56</p> <p>1 A Yeah. 2 Q And who was the CEO of Labor Smart from 3 that point -- well, who was the next CEO of 4 Labor Smart after you? 5 A After me? Tom Zarro. 6 Q And is he still the CEO? 7 A Yes. 8 Q Was it -- was Mr. Zarro affiliated with 9 Labor Smart before your affiliation with 10 Labor Smart? 11 A No. 12 Q Did he -- was his affiliation with 13 Labor Smart -- strike that. 14 Was Mr. Zarro's first affiliation with 15 Labor Smart right around that time you're talking 16 about, January/February 2023? 17 A I believe so, yes. 18 Q What's Mr. Zarro's background? 19 A I don't know; I believe he's a sales 20 entrepreneur on a couple of different businesses. 21 Q And for the time that you held the interim 22 CEO at Labor Smart, did you have the typical 23 duties and responsibilities of a CEO? 24 A Yeah, I mean Labor Smart itself is -- 25 doesn't -- doesn't have any business. I mean,</p>

<p>57</p> <p>1 there's no bank accounts, there's no anything like 2 that, so I was just named while they removed the 3 former CEO. 4 Q Who was the former CEO? 5 A Michael Costello. 6 Q Why was he removed? 7 A He was removed because he was removed from 8 Takeover as well. He was colluding with Jason 9 Tucker and James Deppoleto. 10 Q At that time in January/February 2023, 11 Labor Smart didn't have any business other than 12 Takeover, correct? 13 A When, January of '23? 14 Q Correct. 15 A Yes. 16 Q So for all intents and purposes, 17 Labor Smart's business as of that point was 18 Takeover's business, correct? 19 A Yeah. It was his only subsidiary, yeah. 20 Q So at that point, aside from the fact that 21 Labor Smart was able to be publicly traded and 22 Takeover was not -- well, was that the only 23 distinction between the two at the time, that 24 Labor Smart was able to be publicly traded but 25 Takeover wasn't?</p>	<p>59</p> <p>1 A Correct. 2 Q Labor Smart didn't have any employees, 3 correct? 4 A Correct. 5 Q Labor Smart was not producing any 6 products, correct? 7 A Correct. 8 Q Labor Smart was not producing -- or was 9 not providing any services, correct? 10 A Correct. 11 Q Labor Smart was not doing anything that a 12 typical business would do at that time, correct? 13 A Correct. 14 Q Is Labor Smart the majority of -- strike 15 that. 16 At the time of the purchase -- at the time 17 that Labor Smart purchased Takeover Industries, 18 was Labor Smart, from that point on, the sole 19 shareholder of Takeover? 20 A Originally was the sole shareholder, and 21 then it was majority shareholder. 22 Q And when did that change? 23 A I'm not exactly sure. Maybe 24 October/November of '21. 25 Q And why did that change?</p>
<p>58</p> <p>1 A I believe so. 2 Q So at that time, aside from the fact that 3 it was able to be publicly traded, Labor Smart was 4 essentially a shell company, correct? 5 A Not a good term in the publicly traded 6 sectors, but it's a holding company. Something 7 like that, maybe. 8 Q Well, I get that you don't like the 9 connotation, but is it an accurate description to 10 say that Labor Smart was essentially a shell 11 company? 12 A I'm not sure. 13 Q What do you mean by that? You were the 14 CEO at the time. 15 A Yeah, well, I don't know if I agree with 16 your depiction of it. 17 Q Okay. Well, let me ask it this way: At 18 that time, Labor Smart didn't have any bank 19 accounts, correct? 20 A Correct. 21 Q If had no assets other than Takeover, 22 correct? 23 A Takeover, yeah, that was it. 24 Q Labor Smart didn't own any buildings, 25 correct?</p>	<p>60</p> <p>1 A Mr. Deppoleto put in a private placement 2 to Labor Smart and bought shares of Labor Smart, 3 and then he was also given shares of Takeover, 4 among a few other investors. 5 Q You said a couple things there. I want to 6 unpack them a little bit. 7 A Okay. 8 Q So in October -- October or November 9 of 2021, Mr. Deppoleto bought shares of 10 Labor Smart, correct? 11 A Yes. 12 Q How many shares did he buy at that point? 13 A 400 million, I believe. 14 Q And how many shares of Takeover did he 15 receive as part of that purchase of 400 million 16 shares of Labor Smart? 17 A I believe he might have bought 400 million 18 of that as well, Takeover. 19 Q So he purchased 400 shares of Takeover 20 is -- 400 million shares of Takeover as well? 21 A Yeah, I don't know exactly how it went 22 down, but there was -- it looked like he had 23 originally purchased the 400 million shares of 24 just Labor Smart, and then he was given 25 400 million shares after I think I was gone so...</p>

<p>61</p> <p>1 Q Of Takeover?</p> <p>2 A Yeah.</p> <p>3 Q How many shares of Takeover were there</p> <p>4 when Labor Smart was the sole shareholder of</p> <p>5 Takeover?</p> <p>6 A I believe it was originally started with</p> <p>7 50,000 shares, and then it was -- I think it was</p> <p>8 bumped up to 20 -- 20 billion.</p> <p>9 Q When did that bump happen?</p> <p>10 A I don't know. I wasn't there.</p> <p>11 Q This is when you were frozen out?</p> <p>12 A Yes.</p> <p>13 Q How many shares of there -- strike that.</p> <p>14 Today, how many shares are out of</p> <p>15 Takeover?</p> <p>16 A Are out of it? What do you mean?</p> <p>17 Q How many shares are available of Takeover</p> <p>18 total today? 20 billion still or a different</p> <p>19 number?</p> <p>20 A I would answer it, like, I believe that</p> <p>21 Labor Smart owns 96 percent of the shares. Does</p> <p>22 that answer the question for you?</p> <p>23 Q That answers my question I was going to</p> <p>24 ask you next. The question I was trying to ask</p> <p>25 you was you said that at some point, Takeover --</p>	<p>63</p> <p>1 to try to protect the parent company, Labor Smart,</p> <p>2 and we started a new company.</p> <p>3 Q Maybe I misheard you. Did you say -- with</p> <p>4 respect to trademarks, did you say the trademark</p> <p>5 for Takeover and --</p> <p>6 A Not Takeover. I apologize.</p> <p>7 Q Okay. Just the NXT LVL --</p> <p>8 A Yeah, I meant NXT LVL.</p> <p>9 Q Okay. So Takeover couldn't use the</p> <p>10 NXT LVL trademark after that spring time frame</p> <p>11 that we described earlier, correct?</p> <p>12 A Correct.</p> <p>13 Q But Takeover could have done a different</p> <p>14 brand name, correct?</p> <p>15 A Could have, but it was multi-million</p> <p>16 dollars in debt, and it had a few lawsuits in it.</p> <p>17 Q The team that ran Takeover was essentially</p> <p>18 the same team that started Next Gen Beverages,</p> <p>19 correct?</p> <p>20 A It was myself and Tom Zarro.</p> <p>21 Q And Mr. McBride?</p> <p>22 A No, he was -- he had already left.</p> <p>23 Q And Mr. Pavlik?</p> <p>24 A Mr. Pavlik is just a consultant.</p> <p>25 Q He's the one that puts together the</p>
<p>62</p> <p>1 it started with 50,000 shares, and then it got</p> <p>2 bumped up to 20 billion dollar shares, correct?</p> <p>3 A Billion shares, yeah.</p> <p>4 Q Are there still 20 billion shares of</p> <p>5 Takeover today, or is that -- is the total number</p> <p>6 different than 20 billion?</p> <p>7 A I believe it's still the same.</p> <p>8 Q We've talked about it a little bit, but</p> <p>9 can you describe for me what is Next Gen</p> <p>10 Beverages, LLC?</p> <p>11 A Next Gen Beverages, LLC, is a beverage</p> <p>12 company. Sells products under the Lock'd In name.</p> <p>13 Q And it produces the same types of products</p> <p>14 that Takeover produced, correct?</p> <p>15 A Similar.</p> <p>16 Q Correct?</p> <p>17 A Water, beverages, energy drinks, yeah.</p> <p>18 Q Okay. What was your involvement with</p> <p>19 Next Gen Beverages?</p> <p>20 A I helped to form the company.</p> <p>21 Q What do you mean by that?</p> <p>22 A Well, the Takeover and NXT LVL trademarks</p> <p>23 were gone. There was no assets left in Takeover.</p> <p>24 We had no products left. The company was in so</p> <p>25 much debt, so we used our best business judgment</p>	<p>64</p> <p>1 formulas, isn't he?</p> <p>2 A He does different formulas for us, yeah.</p> <p>3 Q Okay. And he did the formulas for</p> <p>4 Takeover as well, correct?</p> <p>5 A Correct.</p> <p>6 Q So the same person doing the formula for</p> <p>7 Takeover moved over and did formulas for Next Gen,</p> <p>8 correct?</p> <p>9 A Yeah, I've worked with Joe for many years,</p> <p>10 and he's formulated for different companies,</p> <p>11 different brands.</p> <p>12 Q And after you -- well, let me back up.</p> <p>13 You said you helped form Next Gen</p> <p>14 Beverages, correct?</p> <p>15 A Correct.</p> <p>16 Q When the company -- well, when was the</p> <p>17 company officially formed?</p> <p>18 A I believe in June.</p> <p>19 Q Of what year?</p> <p>20 A '23.</p> <p>21 Q So while this lawsuit was pending,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q When did your -- when did you start</p> <p>25 getting the idea to form Next Gen? I understand</p>

<p>65</p> <p>1 that it was formally formed in June 2023, but when 2 did you start getting the idea to create Next Gen? 3 A Well, after we hired a trademark attorney 4 to try to fight with the -- fight for the NXTLVL 5 name, and there was -- we couldn't win, so we -- 6 when we lost the trademark and we could no longer 7 have products to sell, we -- to try to keep the 8 company moving, the parent company, we formed a 9 new company with new brands. 10 Q But when did the idea for this new company 11 start? That's what I'm asking. 12 A In June. 13 Q So you officially formed Next Gen 14 Beverages. Are you -- or at that time, were you a 15 member or a manager of Next Gen Beverages? 16 A Member, yeah. 17 Q Do you have any other role, such as COO, 18 CEO, anything like that? 19 A Yeah, I'm the COO. 20 Q Any other roles with Next Gen Beverages? 21 A No. 22 Q Takeover Industries was a corporation, 23 that's why it's Takeover Industries Incorporated, 24 correct? 25 A Yes.</p>	<p>67</p> <p>1 sum or on a monthly basis, or how does -- how did 2 those work? 3 A Probably three different payments of 4 \$5,000. 5 Q Tied to what? 6 A I don't know. What do you mean? 7 Q Were they just random payments of \$5,000, 8 or was it if the company hits a certain milestone, 9 you get \$5,000? Or what was the rationale for 10 giving you \$5,000 three different times? 11 A To pay me for my time. Work. 12 Q And was this set intervals that you 13 received these payments? 14 A It started out to be, then I stopped 15 taking payments. 16 Q Why did you do that? 17 A Company was struggling for money. 18 Q Who are the current officers for Next Gen 19 Beverages? 20 A Well, it's an LLC, so the members -- 21 Q Oh. Thank you. Thank you. 22 Yeah, who are the current members of 23 Next Gen Beverages. 24 A Myself and Tom. 25 Q Anyone else?</p>
<p>66</p> <p>1 Q But Next Gen Beverages is an LLC, correct? 2 A Yes. 3 Q Why the distinction? 4 A Cheaper to operate in Wyoming. 5 Q Any other reasons? 6 A No, that's it. 7 Q Have you received any compensation from 8 Next Gen Beverages? 9 A Yeah, a small amount. 10 Q How much? 11 A Probably 10 or \$15,000. 12 Q Total or per month? 13 A Total. 14 Q And then is that for your role as 15 COO or -- 16 A Yes. 17 Q -- some other reason? 18 A Yes, role as COO. 19 Q Are you being compensated by Labor Smart 20 right now? 21 A No. 22 Q Have you ever received compensation from 23 Labor Smart? 24 A No. 25 Q The 10 to 15,000, was that all one lump</p>	<p>68</p> <p>1 A No. 2 Q Who else works in any capacity for 3 Next Gen Beverages? 4 A Who else works there? We have, I don't 5 know, multiple volunteers. 6 Q Who were they? 7 A We have a guy named David Anderson. He 8 does -- 9 Q Anyone else? 10 A Yeah, we have marketing, a guy named 11 Javier Leal. 12 Q Can you spell his last name? 13 A L-e-a-l. 14 Q Anyone else? 15 A And Michael Araghi. 16 Q Is that the same one from the Labor Smart 17 board? 18 A Correct. 19 Q Anyone else? 20 A We have somebody named Shannon Murray. 21 Q Anyone else? 22 A I think that's it. 23 Q What's Mr. Anderson's role with Next Gen? 24 A Operations, production. 25 Q And you said Mr. Leal was involved in</p>

<p>69</p> <p>1 marketing?</p> <p>2 A Yeah.</p> <p>3 Q Does he have an official title, chief</p> <p>4 marketing officer or anything like that?</p> <p>5 A I think probably director of marketing.</p> <p>6 Q And Michael Araghi, what's his role?</p> <p>7 A Araghi. He's kind of a presidential type.</p> <p>8 Q And Shannon Murray?</p> <p>9 A Administration.</p> <p>10 Q Does Next Gen have any directors, other</p> <p>11 than director of marketing?</p> <p>12 A I don't think so.</p> <p>13 Q How did Next Gen obtain its startup</p> <p>14 capital?</p> <p>15 A We got investments from board members of</p> <p>16 Labor Smart.</p> <p>17 Q Which ones?</p> <p>18 A Tom Zarro, Luis Sequiera, and Tom</p> <p>19 Fitzgerald.</p> <p>20 Q How much did they each invest?</p> <p>21 A I don't know exactly.</p> <p>22 Q Approximately?</p> <p>23 A Probably couple hundred thousand each.</p> <p>24 Q And you said that Next Gen operates under</p> <p>25 the brand name of Lock'd In. And that's L-o-c-k</p>	<p>71</p> <p>1 A Possibly.</p> <p>2 Q And Takeover could have sold gamer shots</p> <p>3 under the brand name Lock'd In, correct?</p> <p>4 A Quite possibly.</p> <p>5 Q And one of the products sold -- that</p> <p>6 Next Gen Beverages sells under the Lock'd In brand</p> <p>7 name today is hydrogen-rich spring water, correct?</p> <p>8 A Yes.</p> <p>9 Q Are the ingredients in the hydrogen-rich</p> <p>10 spring water that Next Gen Beverages sells today</p> <p>11 different than the hydrogen water that Takeover</p> <p>12 was selling?</p> <p>13 A Yes, just slightly.</p> <p>14 Q What's the difference?</p> <p>15 A Different water source. Different</p> <p>16 minerals, different amount of hydrogen.</p> <p>17 Q Takeover transferred assets to Next Gen</p> <p>18 Beverages, correct?</p> <p>19 A No.</p> <p>20 Q Takeover transferred trade secrets to</p> <p>21 Next Gen Beverages, correct?</p> <p>22 A No.</p> <p>23 Q What's incorrect about the transfer of</p> <p>24 assets question?</p> <p>25 A Takeover had no assets.</p>
<p>70</p> <p>1 apostrophe -d, space, I-n?</p> <p>2 A Correct. Yeah.</p> <p>3 Q And you said that the products that</p> <p>4 Next Gen makes under the brand name Lock'd In are</p> <p>5 essentially the same products that Takeover made,</p> <p>6 correct?</p> <p>7 A Similar.</p> <p>8 Q Okay. There's no reason why Takeover</p> <p>9 couldn't have started making products under the</p> <p>10 Lock'd In brand name, correct?</p> <p>11 A Except for all of the lawsuits and debt.</p> <p>12 Q So the answer is that Takeover could have</p> <p>13 sold products under the brand name of Lock'd In,</p> <p>14 correct?</p> <p>15 A Takeover itself just had a bad name</p> <p>16 because it owed so much money to suppliers and</p> <p>17 things like that that it was not viable.</p> <p>18 Q But it could have --</p> <p>19 A Could have --</p> <p>20 Q -- sold products --</p> <p>21 A -- yeah, somebody came in and gave us</p> <p>22 \$10 million and paid everything off, yeah. I</p> <p>23 mean, that's always a possibility, I guess.</p> <p>24 Q And Takeover could have sold hydrogen</p> <p>25 water under the brand name of Lock'd In, correct?</p>	<p>72</p> <p>1 Q Okay. What about the Labor Smart stock?</p> <p>2 A What about it?</p> <p>3 Q Well, you said Takeover today still has --</p> <p>4 A It's still in Takeover's name, yeah, so it</p> <p>5 didn't transfer anything.</p> <p>6 Q Okay. So today, does Takeover have any</p> <p>7 assets other than the 100 million shares of</p> <p>8 Labor Smart stock?</p> <p>9 A A bunch of debt.</p> <p>10 Q Okay. And your testimony is that Takeover</p> <p>11 didn't transfer any trade secrets to Next Gen</p> <p>12 Beverages, correct?</p> <p>13 A Correct.</p> <p>14 Q Did Next Gen enter an agreement with Manny</p> <p>15 Pacquiao?</p> <p>16 A Next Gen has an agreement with Manny</p> <p>17 Pacquiao, yes.</p> <p>18 Q When was that agreement executed?</p> <p>19 A Sometime after June.</p> <p>20 Q Of what year?</p> <p>21 A '23.</p> <p>22 Q So while this lawsuit was pending?</p> <p>23 A Yes.</p> <p>24 Q And is it a written agreement?</p> <p>25 A I believe so.</p>

Transcript of Michael Holley
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19 (73 to 76)

<p>73</p> <p>1 Q How long does the agreement last?</p> <p>2 A I'm not sure.</p> <p>3 Q More than a year?</p> <p>4 A I don't know.</p> <p>5 Q Were you involved in negotiating the</p> <p>6 agreement?</p> <p>7 A No.</p> <p>8 Q What's the purpose of the agreement?</p> <p>9 A What's the purpose of the agreement?</p> <p>10 Q Yes.</p> <p>11 A Manny Pacquiao is a board member of</p> <p>12 Labor Smart, and he let Next Gen basically use his</p> <p>13 name and likeness because Takeover still owed him</p> <p>14 money when they originally signed him on.</p> <p>15 Q Say a little more about that if you would.</p> <p>16 I'm not quite sure I'm following you.</p> <p>17 A He originally started when Takeover signed</p> <p>18 him to a deal where he would promote the brands,</p> <p>19 and Takeover was supposed to pay him. And they</p> <p>20 paid him some money and some shares, but there was</p> <p>21 never -- still owed him money, I believe, on his</p> <p>22 contract.</p> <p>23 And in November of '22, when I came back</p> <p>24 into the company, Pacquiao -- they sent a letter</p> <p>25 saying that they no longer wanted to be a part of</p>	<p>75</p> <p>1 Q Okay. I'm going to share my screen with</p> <p>2 you for a minute.</p> <p>3 MR. HARVEY: And if we could mark what I'm</p> <p>4 about to show, Madam Court Reporter, we'll mark</p> <p>5 this as Exhibit Number 1, if we could. And this</p> <p>6 is in the documents that were emailed to you.</p> <p>7 And these should go in order with Husch</p> <p>8 Blackwell on the top dated June 14, 2023.</p> <p>9 (WHEREUPON, Holley Exhibit No. 1 was</p> <p>10 presented to the witness.)</p> <p>11 BY MR. HARVEY:</p> <p>12 Q Are you able to see my screen, Mr. Holley?</p> <p>13 A Yes, sir.</p> <p>14 Q Okay. So this is -- we're looking at a</p> <p>15 letter dated June 14, 2023. It's got Husch</p> <p>16 Blackwell on the top.</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q And the subject is, "Cease and Desist and</p> <p>20 Notice of Default," correct?</p> <p>21 A I do.</p> <p>22 Q Have you seen this letter before today?</p> <p>23 A I believe so, yes.</p> <p>24 Q And if we scroll down, there's some</p> <p>25 attachments that were sent with it, correct?</p>
<p>74</p> <p>1 Takeover.</p> <p>2 Q Mr. Pacquiao had a contract with Takeover,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q And it was an exclusive contract with</p> <p>6 Takeover, correct?</p> <p>7 A No, it was actually with Labor Smart and</p> <p>8 Takeover.</p> <p>9 Q Okay. It was exclusive as to Labor Smart</p> <p>10 and Takeover, though, correct?</p> <p>11 A It didn't say exclusive, no.</p> <p>12 Q Was he allowed to do business with another</p> <p>13 beverage company under the Labor Smart/Takeover</p> <p>14 contract?</p> <p>15 A He -- yeah, he does. He has -- currently</p> <p>16 does business with multiple beverage companies all</p> <p>17 around the world.</p> <p>18 Q Okay. So it's your testimony that there</p> <p>19 was no exclusivity whatsoever in the</p> <p>20 Takeover/Labor Smart/Pacquiao contract; is that</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 Q Okay. Did Lock'd In sell NXT LVL products</p> <p>24 on its Lock'd In website?</p> <p>25 A No.</p>	<p>76</p> <p>1 A Okay.</p> <p>2 Q One of which was the Lock'd In website,</p> <p>3 and you can see the date on it is June 12, 2023,</p> <p>4 correct.</p> <p>5 Do you need me to zoom in?</p> <p>6 A Yeah, I can't really see it.</p> <p>7 Okay. Yeah, I see it. There you go.</p> <p>8 Q The highlighted portion, do you see</p> <p>9 it's --</p> <p>10 A June 12th.</p> <p>11 Q -- 2023, correct?</p> <p>12 A Correct.</p> <p>13 Q And if we -- this is the Lock'd In</p> <p>14 website, correct?</p> <p>15 A Yes.</p> <p>16 Q We see some Lock'd In products, correct?</p> <p>17 A Mm-hm.</p> <p>18 Q And then if we keep scrolling down, we see</p> <p>19 NXT LVL gamer shot -- two different types of</p> <p>20 NXT LVL gamer shot, correct?</p> <p>21 A Correct.</p> <p>22 Q And Lock'd In was attempting to sell these</p> <p>23 NXT LVL products at a discount, correct?</p> <p>24 A Looks like it.</p> <p>25 Q The original price was 41.99 for a case of</p>

<p>77</p> <p>1 12 berry punch gamer shots, correct?</p> <p>2 A I believe originally they used to be,</p> <p>3 like, 30-something dollars.</p> <p>4 Q Okay. Well, the website is showing 41.99,</p> <p>5 correct?</p> <p>6 A Yeah, that's what it shows.</p> <p>7 Q But the price that it's actually being</p> <p>8 sold for on the Lock'd In website was \$21,</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. So Lock'd In did, in fact, sell</p> <p>12 NXT LVL products on Lock'd In's website, true?</p> <p>13 A They were posted on the website, but if</p> <p>14 you clicked on it, they would go to Takeover.</p> <p>15 Q Okay. They were advertised on the</p> <p>16 Lock'd In website, correct?</p> <p>17 A Advertised, yeah.</p> <p>18 Q And how was it that Lock'd In had a link</p> <p>19 on its website that would take you to the Takeover</p> <p>20 website?</p> <p>21 A Like, what way? What are you -- what are</p> <p>22 you asking me? Is there...</p> <p>23 Q Did the same person control both websites?</p> <p>24 A It went to a -- I believe a Shopify</p> <p>25 account.</p>	<p>79</p> <p>1 take you over to the Takeover Shopify account?</p> <p>2 A So, yeah, then he was going to allow</p> <p>3 Takeover to sell them to try to raise money to pay</p> <p>4 for legal fees.</p> <p>5 Q I'm sorry. I'm not following you here.</p> <p>6 A Okay.</p> <p>7 Q Let me ask it a simpler way.</p> <p>8 You said Mr. Zarro purchased the inventory</p> <p>9 of gamer shots from Takeover, correct?</p> <p>10 A Correct.</p> <p>11 Q How much did he purchase them for?</p> <p>12 A I don't exactly remember.</p> <p>13 Q Ballpark's fine.</p> <p>14 A No idea. Maybe -- maybe \$150,000. I'm</p> <p>15 not sure.</p> <p>16 Q Let's just say it was \$150,000. So, first</p> <p>17 of all, that \$150,000 should show up on Takeover's</p> <p>18 accounts from when he made that purchase, correct?</p> <p>19 A It did, yeah.</p> <p>20 Q Okay. But then you -- we're seeing them</p> <p>21 on the Lock'd In website even though these are</p> <p>22 Mr. Zarro's gamer shots; is that what you're</p> <p>23 telling me?</p> <p>24 A Yeah, so they went to a separate Shopify</p> <p>25 account. So, like, if you clicked on them then --</p>
<p>78</p> <p>1 Q I'm sorry. I'm not tracking what you're</p> <p>2 saying there.</p> <p>3 A Okay. It's a -- it would go to Takeover's</p> <p>4 Shopify account, and that's where there's, like,</p> <p>5 their e-commerce account.</p> <p>6 Q As of June 12, 2023, when these</p> <p>7 screenshots were taken, did Takeover still have a</p> <p>8 website similar to this Lock'd In website that</p> <p>9 we're looking at?</p> <p>10 A I believe so.</p> <p>11 Q Who took down the Takeover website?</p> <p>12 A I guess -- I guess we did. The company</p> <p>13 did.</p> <p>14 Q And the same people put up the Lock'd In</p> <p>15 website, correct?</p> <p>16 A Different people, but, yeah, they designed</p> <p>17 the website.</p> <p>18 Q Controlled by you though, correct?</p> <p>19 A Yeah, these shots were purchased from</p> <p>20 Takeover by Tom Zarro.</p> <p>21 Q When did Mr. Zarro purchase these shots</p> <p>22 from Takeover?</p> <p>23 A Probably January.</p> <p>24 Q Why did he do that if you -- as you told</p> <p>25 me before, if you clicked on the link, it would</p>	<p>80</p> <p>1 I believe it might have even been owned by</p> <p>2 Mr. Zarro.</p> <p>3 Q Okay. So what you told me before in terms</p> <p>4 of if you click, it's going to the Takeover</p> <p>5 Shopify account --</p> <p>6 A It goes --</p> <p>7 (Unreportable cross-talk.)</p> <p>8 BY THE WITNESS:</p> <p>9 A Yeah, maybe it was Mr. Zarro's.</p> <p>10 BY MR. HARVEY:</p> <p>11 Q Do you have personal knowledge of this, or</p> <p>12 are you speculating?</p> <p>13 A I don't know exactly. If I did, I would</p> <p>14 have better answers for you.</p> <p>15 Q Okay. So you're speculating; you don't</p> <p>16 have personal knowledge, correct?</p> <p>17 Correct?</p> <p>18 A Oh, I said no, yeah.</p> <p>19 Q I think we had a double-negative there</p> <p>20 then.</p> <p>21 A No, I did not have knowledge.</p> <p>22 Q Okay. But we do agree that on the</p> <p>23 Lock'd In website, there are Takeover/NXT LVL</p> <p>24 products being advertised for sale, true?</p> <p>25 A Yes, they were.</p>

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21 (81 to 84)

<p>81</p> <p>1 Q Okay. I'll take that one down.</p> <p>2 Have you ever promoted Lock'd In products</p> <p>3 in your personal social media channels?</p> <p>4 A Possibly on a Twitter account.</p> <p>5 Q You have a Twitter account? Is it under</p> <p>6 your personal name?</p> <p>7 A Lock'd In Mike.</p> <p>8 Q Oh, so it's called Lock'd In?</p> <p>9 A Mm-hm.</p> <p>10 Q When did you start that?</p> <p>11 A Probably earlier this year.</p> <p>12 Q 2024?</p> <p>13 A Yeah.</p> <p>14 Did you say did I promote NXT LVL products</p> <p>15 or Lock'd In products?</p> <p>16 Q Lock'd In products.</p> <p>17 A Yeah.</p> <p>18 Q And this lawsuit has been pending this</p> <p>19 whole year, correct?</p> <p>20 A Yes.</p> <p>21 Q Did you ever promote NXT LVL products on</p> <p>22 your social media accounts?</p> <p>23 A No.</p> <p>24 Q Other than Twitter, what social media</p> <p>25 accounts do you have?</p>	<p>83</p> <p>1 Q Who is Mike Tzanetatos</p> <p>2 T-z-a-n-e-t-a-t-o-s?</p> <p>3 A Tzanetatos. Yeah, he was, like, a</p> <p>4 salesperson for Takeover.</p> <p>5 Q Has he ever held any roles with Next Gen?</p> <p>6 A No.</p> <p>7 Q Let me show my screen again here.</p> <p>8 MR. HARVEY: We'll mark this one as an</p> <p>9 exhibit, and we'll make this Exhibit Number 2.</p> <p>10 (WHEREUPON, Holley Exhibit No. 2 was</p> <p>11 presented to the witness.)</p> <p>12 BY MR. HARVEY:</p> <p>13 Q Are you able to see my screen?</p> <p>14 A I am, yes.</p> <p>15 Q And this is Bates-labeled DEF00567, and</p> <p>16 this is an email from yourself -- well, the top</p> <p>17 one is from yourself to Mr. Sexton, and then</p> <p>18 there's some attorney-client privilege redactions,</p> <p>19 I'm assuming.</p> <p>20 But the email I wanted to ask you about is</p> <p>21 the next one. It's from Mr. McBride. It's dated</p> <p>22 December 9, 2022, and it's to several people</p> <p>23 including yourself and Mr. Tzanetatos, correct?</p> <p>24 A Yes.</p> <p>25 Q Do you recognize this email?</p>
<p>82</p> <p>1 A I'm not a big social media guy, so I have</p> <p>2 a personal Facebook and a personal Instagram, but</p> <p>3 they're all private.</p> <p>4 Q When did you first meet Tom Zarro?</p> <p>5 A Like, in person or phone or...</p> <p>6 Q Introduction in any format, phone or in</p> <p>7 person or...</p> <p>8 A Originally I believe he put money into</p> <p>9 Labor Smart in early '21. May have had -- I don't</p> <p>10 know, may have been on a conference call with him</p> <p>11 then. I don't recall.</p> <p>12 I think he put a \$300,000 loan into</p> <p>13 Labor Smart.</p> <p>14 Q You said somebody introduced you to</p> <p>15 Mr. Schadel earlier today. Do you -- it's been</p> <p>16 about an hour since we were talking about that.</p> <p>17 Do you remember who that person was?</p> <p>18 A I think it was a contact of Joe Pavlik's.</p> <p>19 I don't recall exactly who it was.</p> <p>20 Q Was it an employee, agent, officer,</p> <p>21 director of Takeover?</p> <p>22 A No.</p> <p>23 Q Employee, agent, officer, director of</p> <p>24 Next Gen?</p> <p>25 A No.</p>	<p>84</p> <p>1 A Yes, I do.</p> <p>2 Q And your email, at the time anyways, was</p> <p>3 miketakeoverind.com [sic], correct?</p> <p>4 A Yes.</p> <p>5 Q Do you still have that email?</p> <p>6 A I believe so.</p> <p>7 Q And the email -- the substance of it says,</p> <p>8 "Mike, unfortunately at this time, your employment</p> <p>9 with Takeover Industries is laying you off. It</p> <p>10 has become necessary for the company to reduce its</p> <p>11 workforce. You effectively immediately 12/09/22."</p> <p>12 I think there's probably a missing word</p> <p>13 there.</p> <p>14 A Yeah, probably.</p> <p>15 Q Did I read that right?</p> <p>16 A I think you read it correctly.</p> <p>17 Q Okay. Did you participate in the decision</p> <p>18 to terminate Mr. Tzanetatos?</p> <p>19 A Yeah, there was no -- there was no money</p> <p>20 left in the bank accounts.</p> <p>21 Q Is that the only reason he was being</p> <p>22 terminated?</p> <p>23 A Yeah, I believe so.</p> <p>24 Q And the language that says "became" -- or</p> <p>25 "become necessary for the company to reduce its</p>

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22 (85 to 88)

<p>85</p> <p>1 workforce" in December 2022, what were the reasons 2 for that? 3 A No money. 4 Q Okay. Did Takeover terminate any other 5 employees in December of 2022? 6 A Yes, it had -- I believe it had three 7 employees that were -- that actually got -- were 8 on -- you know, were on regular pay. So it was 9 Mike Tzanetatos, Mike Costello, and Kerby Fortner. 10 Q And you mentioned Mr. Costello's name a 11 couple times today. What was his role with 12 Takeover? 13 A Takeover, he was a -- well, some sales 14 manager, I believe. 15 Q Any other roles? 16 A I don't believe so. 17 Q Has he ever had any roles with Next Gen? 18 A No. 19 Q Who is Maurice Salem? 20 A Maurice Salem is an investor. 21 Q In Takeover? 22 A Labor Smart. 23 Q But not in Takeover? 24 A I don't believe so. I don't know. 25 Q When did you first meet Mr. Salem?</p>	<p>87</p> <p>1 A Never. 2 Q You've never spoken to him or interacted 3 with him in any fashion whatsoever? 4 A I've seen him in court in Arizona. 5 Q Other than that? 6 A That's it. 7 Q Okay. 8 A I was gone before he put his investments 9 in. 10 Q Do you remember a June 10, 2021 special 11 meeting of Takeover's board of directors? 12 A What year? 13 Q 2021. June 10, 2021. 14 Do you remember a special meeting of 15 Takeover's board of directors on or about that 16 date? 17 A Not particularly. 18 Q You don't remember anything about it, or 19 you just don't think you remember specifics? 20 A I don't -- what are you asking me? 21 Q I'm asking if you remember the meeting 22 generally, and then I was going to ask you some 23 more specific questions. 24 A No, I don't. 25 Q Okay. So if there was a meeting, you</p>
<p>86</p> <p>1 A Honestly, I don't think I've ever spoken 2 to him. 3 Q Did he have any role with Takeover. 4 I'm sorry, did you answer? 5 A I'm sorry. I said no. 6 Q Has he ever had any role with Next Gen? 7 A No. 8 Q And you mentioned Mr. Fortner, Kerby 9 Fortner, K-e-r-b-y, and then F-o-r-t-n-e-r? 10 A Correct. 11 Q He was one of the employees who was let go 12 from Takeover? 13 A Yes. 14 Q What was his position with Takeover? 15 A I believe he was in charge of, like, the 16 gaming division. 17 Q What do you mean by that? 18 A He interacted with gaming influencers. 19 Q To try to get them to promote the product? 20 A Correct. 21 Q And was Mr. Fortner paid with investments 22 that Mr. Deppoleto made in Takeover? 23 A I don't know because I wasn't there. 24 Q What was your first interaction with 25 Mr. Deppoleto, if any?</p>	<p>88</p> <p>1 don't remember if it was in person, online, via 2 phone, any of that, correct? 3 A No. 4 Q And you don't remember any resolutions 5 that were passed at that meeting, correct? 6 A Correct. 7 Q And to the extent there's documents about 8 that meeting, you would defer to those documents 9 then? 10 A I would, yes. 11 Q I'm sorry, I didn't hear your answer. 12 A Yes, I would probably defer to the 13 documents. 14 Q Did you have any involvement in soliciting 15 celebrity endorsements for Takeover? 16 A No. 17 Q So interactions with Manny Pacquiao, you 18 didn't have any? 19 A No. 20 Q And interactions with T-Pain, you didn't 21 have any of those? 22 A No, that was all Jason Tucker. 23 Q Okay. But you did at some point see the 24 contracts that Takeover had with Manny Pacquiao, 25 correct?</p>

<p>89</p> <p>1 A I have, yes.</p> <p>2 Q And you saw the contract that -- contract</p> <p>3 that Takeover had with T-Pain, correct?</p> <p>4 A Yes.</p> <p>5 Q And did you sign those contracts on behalf</p> <p>6 of Takeover?</p> <p>7 A I did not.</p> <p>8 Q Who did?</p> <p>9 A I believe Jason, maybe Toby.</p> <p>10 Q Do you remember the length of the contract</p> <p>11 with Mr. Pacquiao?</p> <p>12 A Like, the duration or how many pages it</p> <p>13 was?</p> <p>14 Q Duration. Duration.</p> <p>15 A I don't remember -- I don't recall.</p> <p>16 Q And he signed that on April 27, 2021,</p> <p>17 correct?</p> <p>18 A If you say so.</p> <p>19 Q And I asked you earlier if it was an</p> <p>20 exclusive contract, and you said no because he was</p> <p>21 allowed to work with other beverage companies; is</p> <p>22 that correct?</p> <p>23 A Yeah, I don't believe there was any</p> <p>24 exclusivity in there whatsoever.</p> <p>25 Q Do you remember from your review of the</p>	<p>91</p> <p>1 A No.</p> <p>2 Q What's incorrect about it?</p> <p>3 A The number.</p> <p>4 Q What's the correct number?</p> <p>5 A I believe the number was closer to, like,</p> <p>6 20- or \$30,000.</p> <p>7 Q But you said this all occurred when you</p> <p>8 were not at Takeover, correct?</p> <p>9 A Correct.</p> <p>10 Q And so you don't know the first time that</p> <p>11 Mr. McBride used the Takeover funds for his</p> <p>12 personal expenses other than it was sometime after</p> <p>13 you were not with Takeover, correct?</p> <p>14 A Yeah --</p> <p>15 MR. SEXTON: Object to form.</p> <p>16 BY MR. HARVEY:</p> <p>17 Q I'm sorry. I didn't hear your answer.</p> <p>18 THE WITNESS: What did you say, David?</p> <p>19 MR. SEXTON: It was just an objection.</p> <p>20 You can go ahead and answer.</p> <p>21 BY THE WITNESS:</p> <p>22 A No, I have no idea. I wasn't there.</p> <p>23 BY MR. HARVEY:</p> <p>24 Q I should have said this at the rules at</p> <p>25 the beginning: Your counsel may object at several</p>
<p>90</p> <p>1 contracts whether Pacquiao agreed to refrain from</p> <p>2 promoting products that were competing with</p> <p>3 NXT LVL products?</p> <p>4 A I don't believe so.</p> <p>5 Q You're aware that Mr. McBride spent</p> <p>6 Takeover funds on personal expenses, correct?</p> <p>7 A Just from hearing about it. I wasn't</p> <p>8 there.</p> <p>9 Q When did you become aware that Mr. McBride</p> <p>10 used Takeover funds for personal expenses?</p> <p>11 A Hold on, please. There we go. I don't</p> <p>12 know what happened.</p> <p>13 Can you repeat that? I apologize.</p> <p>14 Q Oh, yeah. No problem.</p> <p>15 When did you first become aware that</p> <p>16 Mr. McBride had used Takeover funds for personal</p> <p>17 expenses?</p> <p>18 A I -- after coming back, I saw that there</p> <p>19 was -- they alleged that he had spent personal</p> <p>20 money.</p> <p>21 Q On things like shopping and travel?</p> <p>22 A Yeah, but I believe that they were -- that</p> <p>23 they were business expenses.</p> <p>24 Q And the amount that Mr. McBride used was</p> <p>25 over \$250,000, correct?</p>	<p>92</p> <p>1 times today, but there's no judge to rule on the</p> <p>2 objection, so just let him get his objection out,</p> <p>3 and then go ahead and answer unless he tells you</p> <p>4 not to.</p> <p>5 A Got you.</p> <p>6 Q And you don't know the last instance of</p> <p>7 Mr. McBride using Takeover funds for personal</p> <p>8 expenses other than it occurred before you came</p> <p>9 back to Takeover, correct?</p> <p>10 A Like I said, I wasn't there.</p> <p>11 Q Okay. Did Takeover reprimand Mr. McBride</p> <p>12 in any way?</p> <p>13 A Once again, I wasn't there.</p> <p>14 Q Okay. Were you aware whether Takeover</p> <p>15 placed him on a leave of absence?</p> <p>16 A Yeah. Yes, I do.</p> <p>17 Q And for what time period was he placed on</p> <p>18 a leave of absence?</p> <p>19 A I'm not exactly sure.</p> <p>20 Q And did Mr. McBride voluntarily step down</p> <p>21 from his position as a director?</p> <p>22 A Did he voluntarily step down? Yeah, when</p> <p>23 he resigned in June.</p> <p>24 Q Of what year?</p> <p>25 A '23.</p>

<p>93</p> <p>1 Q And that was his position as director of 2 Labor Smart? 3 A All positions. 4 Q I want to make sure we're on the same page 5 here. So your testimony is that Mr. McBride 6 stepped down from his position as a director of 7 Takeover in June of 2023? 8 A I believe he -- yeah, I believe he 9 resigned from Takeover, from Labor Smart, from 10 everything in, I believe, it was June. 11 Q 2023? 12 A Correct. 13 Q Do you know whether he voluntarily stepped 14 down from his position as director of Takeover 15 before June 2023 even if he rejoined later? 16 A No. 17 Q Okay. 18 A Have to ask Jason. 19 Q Did you ever make unauthorized 20 distributions from Takeover? In other words, 21 distributions without the approval from Takeover's 22 board of directors? 23 A No. Never. 24 Q Have you ever been accused of making 25 unauthorized distributions from Takeover?</p>	<p>95</p> <p>1 accusations. 2 Q And what's the basis for your denial of 3 those accusations? 4 A That we had authorization from the board. 5 Q The distributions in question, when did 6 you make the first distribution that was at issue? 7 A They were all in question. Any time I 8 made any distribution to anybody in the company. 9 Q I'm just trying to bookend it. When was 10 the first one that you were being accused of 11 making an unauthorized distribution? 12 A Like I'm saying, he's saying any 13 distribution I made, any time I paid anybody in 14 the company, he's saying it was unauthorized. 15 Q And what was the date of the first one of 16 those distributions? 17 A I don't know; probably when we started the 18 bank account in maybe February or March. 19 Q Of 2021? 20 A Mm-hm. 21 Q Yes? 22 A Yes. 23 Q And when was the last distribution that he 24 was accusing you about? 25 A I don't know exactly.</p>
<p>94</p> <p>1 A Falsely accused, yes. 2 Q Who made those accusations? 3 A Jason Tucker. 4 Q And what were the content of his 5 accusations? 6 A That they were not authorized. 7 Q In what way? 8 A I don't know what you mean. 9 Q Well, Mr. Tucker, you're saying, accused 10 you of making unauthorized distributions, correct? 11 A Correct. 12 Q And when he said you're making 13 unauthorized distributions, what did he say in 14 terms of why they were unauthorized? 15 A I don't know. 16 Q For example, you made a distribution 17 without the approval of Takeover's board of 18 directors; is that what he was accusing you of? 19 A Quite possibly, yes. 20 Q Were these accusations in writing? 21 A Filed a lawsuit against me. 22 Q Okay. And that's the Arizona lawsuit? 23 A Mm-hm. Yes. 24 Q And you deny those accusations? 25 A Yes, I do. They were all found unfounded</p>	<p>96</p> <p>1 Q Before or after this lawsuit was filed? 2 A Before. 3 Q Of the distributions in question, how much 4 did you personally receive? 5 A I don't know. 6 Q Ballpark? 7 A I don't recall. 8 Q Closer to 5,000, or closer to 500,000 or 9 closer to 1 million? 10 A Like, total? 11 Q Total. 12 A No, yeah, way less. 13 Q Than a million? 14 A Yeah. 15 Q So ballpark, closer to 5,000 or 500,000? 16 A Closer to 250,000. 17 Q And what did you do with that money? 18 A What did I do with my money? 19 Q How did you use that money that you 20 specifically received from those distributions? 21 A I don't think that has anything to do with 22 this. 23 Q That's not how this works. What did you 24 do with the money? 25 A Well, I put it in my bank account, paid</p>

<p>97</p> <p>1 normal bills, bought food, car payments, you know, 2 house payments. 3 Q Used it for personal expenditures? 4 A Personal pay, yeah. 5 Q And the total amount, not just what went 6 to you, but the total amount at issue with the 7 distributions that Mr. Tucker was accusing you of 8 giving out unauthorized -- in an unauthorized 9 manner, the total of those distributions was over 10 \$750,000, correct? 11 A Alleged, yeah. 12 Q Are you disputing the total or just 13 whether he was right about it was unauthorized? 14 In other words, you agree that the amount at issue 15 was over 750,000; you just disagree with whether 16 it was unauthorized, true? 17 A He was including even distributions that I 18 paid him, so, yeah, they -- everything is -- none 19 of it's true. 20 Q Okay. But the total amount, you agree, 21 was over \$750,000, correct? 22 A I don't know. 23 Q Did you ever charge personal expenses to 24 Takeover? 25 A No.</p>	<p>99</p> <p>1 A Right. Yeah. 2 Q -- Takeover money for personal -- 3 A He accused me -- 4 Q -- correct? 5 A -- everything. 6 Q Okay. What was the dollar amount at issue 7 that he was accusing you of wrongfully using? 8 A (Inaudible.) 9 (Reporter clarification.) 10 BY THE WITNESS: 11 A I have no idea. 12 BY MR. HARVEY: 13 Q And you categorically deny ever using 14 Takeover money for personal expenses; is that what 15 I'm hearing? 16 A Yes. 17 Q Did your family members ever make personal 18 purchases that were charged to Takeover? 19 A Yeah, my daughter accidentally used a card 20 on file at Amazon for something that she 21 purchased. It was about \$6. 22 Q You had a company -- you had a company 23 card on file for Amazon? 24 A On my Amazon account, yeah. 25 Q What was Takeover purchasing from Amazon?</p>
<p>98</p> <p>1 Q Have you ever been accused of charging 2 personal expenses to Takeover? 3 A Yes. 4 Q Who made those accusations? 5 A Jason Tucker. 6 Q And what was he accusing you of? 7 A Using company credit card for personal 8 expenses. 9 Q Such as what? 10 A I believe he even accused me of saying 11 that they were personal expenses when we were -- 12 we rented an Airbnb, if you will, for a trade show 13 that we were in Chicago. He actually stayed there 14 with the other team members. And he was saying 15 that I -- that was a personal expense. 16 Q Did he accuse you of using Takeover money 17 to engage in personal travel? 18 A No. 19 Q Did he accuse you of using Takeover money 20 to purchase items -- personal shopping items? 21 A Yeah, once again, he accused me of doing 22 all those things, but they were -- most of them 23 were for trade show items or different items for 24 the company. 25 Q Okay. So he did accuse you of using --</p>	<p>100</p> <p>1 A Items for the trade shows that we were -- 2 we were in. 3 Q So it was through your personal Amazon 4 account that this card was on there, that's how 5 your daughter was able to get access to it? 6 A Yeah. Accidentally, yeah. 7 Q Other than that instance, were there any 8 other instances of your family members making 9 personal purchases that were charged to Takeover? 10 A (Inaudible.) 11 Q I'm sorry. I didn't hear you. 12 A No. No. No. 13 Q Did you attend the December 21, 2021 14 Takeover board meeting? 15 A No, I was not invited. 16 Q And if I read the documents correctly, I 17 think you were -- there was an indication that you 18 may have been hospitalized with COVID during that 19 time. Were you in the hospital with COVID 20 during -- around December 21, 2021? 21 A I believe that's right when I got out of 22 the hospital. 23 Q Okay. Did you receive notice of that 24 December 21, 2021 meeting? 25 A No. No notice.</p>

<p>101</p> <p>1 Q Were you a board member of Takeover in 2 December 2021? 3 A Yes. 4 Q Okay. Do you know what the purpose of the 5 meeting was? 6 A Not during the time, but now I do. 7 Q What do you understand it to be now? 8 A To remove me. 9 Q From the Takeover board of directors? 10 A Correct. 11 Q And was that removal permanent or 12 temporary? 13 A I believe they were trying to do it 14 permanently. 15 Q Okay. And they did, in fact, remove you 16 at that meeting, correct? 17 A Unjustfully, yeah. 18 Q After you were removed from the Takeover 19 board of directors, did you remain in contact with 20 anyone from Takeover? 21 A Yeah, I mean, through court and through 22 things like that. 23 Q How about in the, let's just say, 24 December 2021 through, let's say, June 2022 time 25 frame, were you in contact with anyone from</p>	<p>103</p> <p>1 A I don't know. Our lawyers got us 2 together. 3 Q The November -- and there was a board 4 meeting on -- strike that. 5 There was a November 7, 2022 Takeover 6 board meeting, correct? 7 A Correct. 8 Q And you attended that board meeting, 9 correct? 10 A Yes. 11 Q And this was the culmination of your 12 lawyers putting you back in touch? 13 A Correct. 14 Q Did you call the board meeting? 15 A No. 16 Q Did you call the meeting in conjunction 17 with Toby McBride? 18 A I believe Toby called the meeting. 19 Q What was the purpose of the November 7, 20 2022 board meeting? 21 A It was to speak about the wrongdoing of 22 Jason Tucker. 23 Q You didn't have the authority to call the 24 November 7, 2022 board meeting, correct? 25 A I don't know. I didn't call it, though.</p>
<p>102</p> <p>1 Takeover in that time frame? 2 A No. 3 Q Not Mr. McBride? 4 A No, frozen out. 5 Q And were you off of the Labor Smart board 6 at that point, too? 7 A They tried to remove me from the 8 Labor Smart board as well incorrectly and 9 unjustfully. 10 Q Did you miss any Labor Smart board 11 meetings at any point in there when they were 12 trying to remove you? 13 A I wasn't invited to any. 14 Q When did you start getting invited again 15 to the Labor Smart board meetings? 16 A Not until November of '22. 17 Q Okay. After the December 21, 2021 18 Takeover board meeting, when is the first time you 19 spoke to either Mr. McBride or Mr. Pavlik? 20 A After what date? I'm sorry. 21 Q The December 21, 2021 Takeover board 22 meeting. 23 A Probably November. 24 Q And what brought about that 25 reintroduction, as it were?</p>	<p>104</p> <p>1 Q Right. But you understood you were off 2 the board as of December 21, 2021, correct? 3 A It was in contention that I was -- I was 4 wrongfully removed and they didn't do it the 5 proper way. 6 Q When did you raise an objection to it for 7 the first time? 8 A Multiple times in court. 9 Q No. No. No. After the December 21, 2021 10 board meeting, when is the first time you raised 11 an objection to the substance of that board 12 meeting? 13 A I think we had our first hearing in maybe 14 February or March. 15 Q Of 20- -- 16 A 2. 17 Q -- 22? 18 Okay. So that was one when you raised an 19 objection. So you're telling me you still thought 20 you were on the board as of, let's say, April 21 of 2022? 22 A Yes. 23 Q At the November 7, 2022 board meeting, did 24 any Takeover board members express concern to you 25 about being at a board meeting while you were</p>

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27 (105 to 108)

<p>105</p> <p>1 suspended from the board?</p> <p>2 A I was suspended from the board?</p> <p>3 Q Removed from the board.</p> <p>4 A No.</p> <p>5 Q So no one at the November 7, 2022 --</p> <p>6 A They believed that I was wrongfully</p> <p>7 removed as well.</p> <p>8 Q I just want to make sure I'm clear. At</p> <p>9 the November 7, 2022 board meeting, no one raised</p> <p>10 a concern about you being at the board meeting</p> <p>11 even though you had been removed from the board as</p> <p>12 of November 2021?</p> <p>13 A Obviously Jason Tucker did.</p> <p>14 Q Okay. And what did he say?</p> <p>15 A I don't believe he said anything</p> <p>16 personally.</p> <p>17 Q So no one raised any vocal concern at the</p> <p>18 board meeting; is that your testimony?</p> <p>19 A I believe his -- not at the board meeting</p> <p>20 because he didn't show up.</p> <p>21 Q He raised a concern before then?</p> <p>22 A I think his attorney did.</p> <p>23 Q Okay. And what was your response to the</p> <p>24 concern that his attorney raised?</p> <p>25 A My attorney responded saying that I was</p>	<p>107</p> <p>1 page, correct?</p> <p>2 A Correct.</p> <p>3 Q And then if we look at DEF00004, so the</p> <p>4 page above that, towards the bottom of the page,</p> <p>5 there's a couple of "Resolved," and then there's</p> <p>6 some words after them.</p> <p>7 The one that's the third from the bottom,</p> <p>8 which I've highlighted for you, go ahead and read</p> <p>9 it and then I'll ask you a question. Let me know</p> <p>10 when you're done.</p> <p>11 A Okay.</p> <p>12 Q So this is purporting to tell us that as</p> <p>13 of November 7, 2022, you were appointed to</p> <p>14 Takeover's board of directors, correct?</p> <p>15 A Yes.</p> <p>16 Q Did the board of Labor Smart vote to</p> <p>17 suspend Michael Costello from his role as CEO of</p> <p>18 Labor Smart?</p> <p>19 A I believe so, yes.</p> <p>20 Q If we go to -- up a little bit to DEF00003</p> <p>21 the second "Resolved" above the bottom, which I've</p> <p>22 highlighted for you, says, "Resolved: Michael</p> <p>23 Costello is suspended from his position as CEO of</p> <p>24 the company for a period of 30 days with pay, and</p> <p>25 his authority to act on behalf of the company is</p>
<p>106</p> <p>1 wrongfully removed.</p> <p>2 Q Okay.</p> <p>3 A That I was still a board member.</p> <p>4 Q Let me share my screen with you again.</p> <p>5 A Okay.</p> <p>6 MR. HARVEY: If we could make this</p> <p>7 Exhibit 3, please.</p> <p>8 (WHEREUPON, Holley Exhibit No. 3 was</p> <p>9 presented to the witness.)</p> <p>10 BY MR. HARVEY:</p> <p>11 Q Are you able to see Exhibit 3, Mr. Holley?</p> <p>12 A Yes, sir.</p> <p>13 Q And the top of it says "Resolution of the</p> <p>14 Board of Directors of Labor Smart, Inc.," correct?</p> <p>15 A Correct.</p> <p>16 Q And we see at the very top it says,</p> <p>17 "Whereas, on November 7, 2022, at 9:00 a.m., MST,</p> <p>18 Michael Holley, Toby McBride, and Joseph Pavlik</p> <p>19 appeared by conference call," correct?</p> <p>20 A Correct.</p> <p>21 Q And if we go to the bottom of this</p> <p>22 document and, in particular, Bates label DEF00005,</p> <p>23 there's some signatures, correct?</p> <p>24 A Mm-hm. Correct.</p> <p>25 Q And that's your signature on that last</p>	<p>108</p> <p>1 in all aspects, revoked during this period."</p> <p>2 Did I read that right?</p> <p>3 A I believe so, yeah.</p> <p>4 Q Why was Mr. Costello suspended?</p> <p>5 A He was colluding with James Deppoleto and</p> <p>6 Jason Tucker.</p> <p>7 Q And what do you mean by that?</p> <p>8 A They were trying to take NXT LVL -- you</p> <p>9 know, they were doing things with NXT LVL gamer</p> <p>10 shots without involving any of the other board</p> <p>11 members.</p> <p>12 Q If we go back down to DEF00004, sort of</p> <p>13 towards the top of the page, it says, "Resolved:</p> <p>14 Michael Holley is appointed interim CEO of the</p> <p>15 company until the board" -- that's supposed to be</p> <p>16 "of directors" -- "makes a determination with</p> <p>17 respect" -- "a determination with respect" -- I</p> <p>18 think there's supposed to be "to Michael</p> <p>19 Costello," correct?</p> <p>20 A Correct.</p> <p>21 Q How long did that interim appointment</p> <p>22 last?</p> <p>23 A Just a few months.</p> <p>24 Q And then if we go down a little bit</p> <p>25 further in that same page, DEF4, if we look at the</p>

<p>109</p> <p>1 first resolved from the bottom, it says, 2 "Resolved: The planned spinoff of Takeover is 3 suspended for 90 days while the company undertakes 4 a review of documents and information concerning 5 the transaction, which has" -- "which have been 6 withheld by Jason Tucker." 7 Did I read that correct? 8 A I think so, yeah. 9 Q What does "the planned spinoff" refer to? 10 A The company had planned to spin out 11 Takeover because Labor Smart was no longer 12 trading. 13 Q Why not? 14 A It couldn't get all of the documents 15 together to satisfy the -- the rules to -- 16 Q Labor Smart had been suspended from 17 being able -- 18 A Trade. 19 Q -- trade? 20 A Yes. 21 Q When did that happen? 22 A I don't know, mid '21. 23 Q And what happened there? Why wasn't it 24 able to get the documents together? 25 A It was from the former Labor Smart</p>	<p>111</p> <p>1 tracking. 2 A I don't know. It's a -- a spin-out, so, 3 like, if you -- it's a subsidiary under a publicly 4 traded company. It can -- what they call spin-out 5 is, you know, you file a form, like, basically 6 starting from scratch, like, you know, starting a 7 public company -- 8 Q Even though -- 9 A -- paperwork -- 10 Q Sorry. Keep going. I didn't mean to 11 interrupt you. 12 A So in the process of trying to file all 13 the paperwork to be publicly traded, Takeover 14 itself. 15 Q So even though when it was a subsidiary of 16 a publicly traded company, Takeover could not be 17 publicly traded? You're telling me that once 18 Labor Smart got suspended from publicly trading, 19 Takeover would then be able to publicly trade? 20 A It's not that it couldn't be publicly 21 traded, it's just -- it was faster to merge with 22 Labor Smart to become publicly traded. 23 Q So what was the -- this "Resolved" that 24 you're looking at, what was the point of 25 suspending the spinoff for 90 days?</p>
<p>110</p> <p>1 company. They didn't keep the proper records. I 2 think they went -- they were un-reporting for five 3 years. 4 Q So as of mid 2021, Labor Smart hadn't been 5 reporting for about five years? 6 A It had filed a form, I guess, before we 7 took over that was 15D where they go nonreporting, 8 but new rules in the OTC or SEC mandated that they 9 report somehow, and they just couldn't get the -- 10 couldn't get the paperwork properly done. 11 Q And the ultimate suspension you said 12 happened in mid 2021? 13 A I can't -- I don't know exactly. I don't 14 recall. It's either -- I'm going to say maybe 15 June to November-ish. 16 Q And so the concept was, because 17 Labor Smart had been suspended from publicly 18 trading, it was going to spin out Takeover? 19 A Yeah, Takeover would spin out and then be 20 able to be publicly traded and keep all of the 21 same shareholders. 22 Q How was Takeover going to be able to be 23 publicly traded? 24 A That's what a spin-out is. 25 Q Describe it for me. Maybe I'm not</p>	<p>112</p> <p>1 A Just, I guess, it was in progress already, 2 so we just put everything on hold because there 3 was no money or anything to do -- to pay for 4 anything. 5 Q Well, this line about "the company 6 undertakes a review of documents and information 7 concerning the transaction," what is that 8 referring to? What was the plan there? 9 A Just to take a look at it and see what the 10 real costs and things were going to be. 11 Q Was that going to be an expensive 12 undertaking; is that what you're telling me? 13 A Yeah. 14 Q And for what reason other than filing a 15 couple forms? What would have been so expensive 16 about it? 17 A Oh, it's, I don't know, upwards of 18 probably 200,000, \$250,000 to get everything done. 19 Q For what? I mean, what would the \$200,000 20 go to? 21 A I don't know how to describe it exactly to 22 you. 23 Q Legal fees or something else? 24 A Legal fees. I mean, there's -- yeah, it's 25 all kinds of things.</p>

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Conducted on October 4, 2024

29 (113 to 116)

<p>113</p> <p>1 Q Did Labor Smart conduct a review of</p> <p>2 documents and information concerning the</p> <p>3 transaction?</p> <p>4 A Yes.</p> <p>5 Q And what did the review tell you?</p> <p>6 A That it was too expensive at the time.</p> <p>7 Q And so at the end of that review,</p> <p>8 Labor Smart decided to cancel the planned</p> <p>9 spin-off; is that what you're telling me?</p> <p>10 A It was put on hold.</p> <p>11 Q Until when?</p> <p>12 A Well, looking back at it, indefinitely.</p> <p>13 Q As of this date, how long were you</p> <p>14 anticipating -- or, actually, let me back up.</p> <p>15 When did the review take place,</p> <p>16 approximately?</p> <p>17 A When did the review take place for the</p> <p>18 spin-off?</p> <p>19 Q Well, you said -- I asked if Labor Smart</p> <p>20 did, in fact, do a review of documents and</p> <p>21 information concerning the transaction, and you</p> <p>22 said yes. How long did that process take?</p> <p>23 A I don't know, 30 days, 60 days.</p> <p>24 Q So at the end of that 30 to 60 days, you</p> <p>25 said it wasn't canceled, it was just put on hold.</p>	<p>115</p> <p>1 DEF00011, you signed as a director of Takeover,</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And that's your signature?</p> <p>5 A That is my signature.</p> <p>6 Q Now, it's got -- Mr. Pavlik just signs</p> <p>7 everything as a director, correct?</p> <p>8 A I'm not sure.</p> <p>9 Q There's no qualification as to what he's</p> <p>10 agreeing to. As opposed to yourself, for example,</p> <p>11 it says, "Mike Holley, Director, as to Resolutions</p> <p>12 1-7, and abstaining from Resolution 8," correct?</p> <p>13 A Okay.</p> <p>14 Q So Mr. Pavlik doesn't abstain from</p> <p>15 anything according to his signature block,</p> <p>16 correct?</p> <p>17 A I would believe that to be true.</p> <p>18 Q So then if we look at Resolution 8, it</p> <p>19 says, "Resolved: Veronica Manolio, counsel for</p> <p>20 Takeover, shall immediately turn over to the</p> <p>21 president and CEO, all contracts, documents,</p> <p>22 information, communications, passwords, and</p> <p>23 financial accounts of Takeover," correct?</p> <p>24 A Correct.</p> <p>25 Q Why did you abstain from Resolution 8?</p>
<p>114</p> <p>1 How long were you anticipating that it was going</p> <p>2 to be put on hold for as of that point?</p> <p>3 A There was no -- no set time.</p> <p>4 Q I'm going to take that one down and put</p> <p>5 another one up.</p> <p>6 (WHEREUPON, Holley Exhibit No. 4 was</p> <p>7 presented to the witness.)</p> <p>8 BY MR. HARVEY:</p> <p>9 Q Are you able to see my screen?</p> <p>10 A I can.</p> <p>11 MR. HARVEY: We'll make this -- I think</p> <p>12 this is Exhibit 4, if we could.</p> <p>13 BY MR. HARVEY:</p> <p>14 Q And at the top of this one, it says</p> <p>15 written consent of -- well, it says "Written</p> <p>16 Consent of" -- well, it says, "Written Consent</p> <p>17 Board of Directors of Takeover Industries, Inc."</p> <p>18 This is Bates-labeled, the first one is DEF00009.</p> <p>19 Do you recognize this document,</p> <p>20 Mr. Holley?</p> <p>21 A I believe so, yes.</p> <p>22 Q What is it?</p> <p>23 A It's a written consent of the board of</p> <p>24 directors of Takeover.</p> <p>25 Q And if we look at the last page, which is</p>	<p>116</p> <p>1 A Have no idea.</p> <p>2 Q So as of November 7, 2022, it was</p> <p>3 important enough for you to abstain, but you're</p> <p>4 telling me as you sit here today, you have no idea</p> <p>5 why you abstained from that resolution?</p> <p>6 A I'm sure my attorney told me not to.</p> <p>7 Q At the November 7, 2022 meeting, did the</p> <p>8 board appoint Joseph Pavlik as the interim</p> <p>9 president of Takeover?</p> <p>10 A I believe so, yes.</p> <p>11 Q And that's Resolution Number 6, correct?</p> <p>12 A Yep.</p> <p>13 Q Did Mr. Deppoleto provide written consent</p> <p>14 for Mr. Pavlik's appointment as Takeover's</p> <p>15 president?</p> <p>16 A Not that I know of.</p> <p>17 Q Are you aware of any officer or director</p> <p>18 of Takeover asking for Mr. Deppoleto's consent for</p> <p>19 Mr. Pavlik to take over as president?</p> <p>20 A No.</p> <p>21 Q At the November 7, 2022 meeting, did the</p> <p>22 board appoint Toby McBride as the CEO of Takeover?</p> <p>23 A He is reappointed as CEO, yeah.</p> <p>24 Q Okay. That's Resolution Number 7,</p> <p>25 correct?</p>

<p>117</p> <p>1 A Correct.</p> <p>2 Q Did Mr. Deppoleto provide written consent</p> <p>3 for Mr. McBride's appointment as Takeover's CEO?</p> <p>4 A Not that I'm aware of.</p> <p>5 Q And you never asked for Mr. Deppoleto's</p> <p>6 written consent for Mr. McBride's appointment as</p> <p>7 Takeover's CEO, correct?</p> <p>8 A No.</p> <p>9 Q I think we had a double-negative there.</p> <p>10 Did you ever ask for Mr. Deppoleto's</p> <p>11 written consent to have Mr. McBride appointed as</p> <p>12 Takeover's CEO?</p> <p>13 A No.</p> <p>14 Q And you're also not aware of any officer</p> <p>15 or director of Takeover seeking Mr. Deppoleto's</p> <p>16 consent to have Mr. McBride appointed as</p> <p>17 Takeover's CEO, correct?</p> <p>18 A Correct.</p> <p>19 Q After your reinstatement to the Takeover</p> <p>20 board of directors, did you have access to</p> <p>21 Takeover's website?</p> <p>22 A No.</p> <p>23 Q So it's your testimony that after</p> <p>24 November 7, 2022, you didn't take any actions with</p> <p>25 respect to Takeover's website? Is that what</p>	<p>119</p> <p>1 Q Takeover's online sales, yes.</p> <p>2 A In what way?</p> <p>3 Q In any way.</p> <p>4 A I don't understand your question. Are you</p> <p>5 saying did I interfere?</p> <p>6 Q No, did you have any involvement</p> <p>7 whatsoever, using the broadest definition of the</p> <p>8 word "involvement," with Takeover's online sales?</p> <p>9 A Originally, yeah. We helped set it up.</p> <p>10 Q Okay. What specifically was your</p> <p>11 involvement?</p> <p>12 A I don't know. I'm not a -- I'm not a web</p> <p>13 designer or anything like that, so if that's what</p> <p>14 you're asking me. I had input, sales prices,</p> <p>15 things like that.</p> <p>16 Q So if you -- once the -- I understand that</p> <p>17 you're not a web designer. Once the website's up</p> <p>18 and live, if someone wanted to make changes to it</p> <p>19 from the very beginning, from the first day it</p> <p>20 went live, who had access to do that?</p> <p>21 A I don't recall.</p> <p>22 Q If you wanted to make changes, did you</p> <p>23 have to go back to -- well, let me back up.</p> <p>24 Did you farm out the work to get it going</p> <p>25 live to begin with? In other words, did you hire</p>
<p>118</p> <p>1 you're telling me?</p> <p>2 A Correct.</p> <p>3 Q Did you ever block others from having</p> <p>4 access to Takeover's website?</p> <p>5 A I don't have access; how am I going to</p> <p>6 block somebody?</p> <p>7 Q Okay. Did you ever interfere with</p> <p>8 Takeover's ability to make online sales?</p> <p>9 A No.</p> <p>10 Q Did you ever interfere with Takeover's</p> <p>11 ability to accept online orders?</p> <p>12 A No.</p> <p>13 Q Did you ever take any actions that</p> <p>14 interfered with Takeover's ability to generate</p> <p>15 income?</p> <p>16 A No.</p> <p>17 Q Who had access or control of the Takeover</p> <p>18 website?</p> <p>19 A Jason Tucker.</p> <p>20 Q Mr. McBride did, too, as well, correct?</p> <p>21 A No.</p> <p>22 Q And so it's your testimony you never</p> <p>23 became involved with Takeover's online sales; is</p> <p>24 that right?</p> <p>25 A Was I ever involved in online sales?</p>	<p>120</p> <p>1 some sort of website design company or something?</p> <p>2 A I believe that Jason Tucker and his wife,</p> <p>3 Melissa Tucker, took over the online sales and</p> <p>4 access to all of those websites, everything.</p> <p>5 Q So, for example, if you had a whiz-bang</p> <p>6 idea about something that should go on the</p> <p>7 website, did you pick up the phone and call Jason</p> <p>8 and say: Hey, I think we should do this on the</p> <p>9 website?</p> <p>10 Or how would that have worked?</p> <p>11 A I don't know. I never did that so...</p> <p>12 Q Okay. I'm going to show you another</p> <p>13 exhibit now. This will be Exhibit Number 5.</p> <p>14 And I'm going to give you some context for</p> <p>15 this question because you said several times to me</p> <p>16 that you were frozen out of the company</p> <p>17 essentially for a certain period of time, correct?</p> <p>18 A Correct.</p> <p>19 Q And that time was essentially</p> <p>20 December 2021 through November 2022, correct?</p> <p>21 A Correct.</p> <p>22 Q And so this may shave a good half hour off</p> <p>23 your deposition. I'm going to ask you about this</p> <p>24 first document. There's a whole series of --</p> <p>25 well, I'll show you this one so you can see it and</p>

Transcript of Michael Holley
Conducted on October 4, 2024

31 (121 to 124)

<p>121</p> <p>1 have a little context. 2 (WHEREUPON, Holley Exhibit No. 5 was 3 presented to the witness.) 4 BY MR. HARVEY: 5 Q Are you able to see Exhibit Number 5, the 6 convertible note purchase agreement? 7 A Yes, sir. 8 Q It's got an Exhibit A on the top, and 9 there's also some court markings on the top. 10 A Okay. 11 Q And this is dated as of May 25, 2022, 12 correct? 13 A Correct. 14 Q Before this lawsuit, had you ever seen 15 this document? 16 A No, I was not there. 17 Q Okay. And when this was being negotiated, 18 you weren't involved with the company, so you 19 weren't involved with the negotiations, the 20 drafting, anything like that; is that correct? 21 A I had no idea about any of this, yeah. 22 Q Okay. And so just to kind of close the 23 loop here, I'm going to scroll down. 24 The signatures on it, for Exhibit 5 for 25 Takeover Industries, it says "Jason Tucker,</p>	<p>123</p> <p>1 true? 2 A True. 3 Q And you weren't involved in the 4 authorization of the company to enter into these 5 contracts, correct? 6 A Correct. 7 Q Okay. So in terms of personal knowledge 8 about what was discussed that led to all of these 9 agreements and progress notes that are at issue in 10 this lawsuit, you have no personal knowledge, 11 correct? 12 A Correct. 13 Q Okay. I'm going to take that down. 14 So I'm not going to go through all of the 15 rest of them as long as we're on the same page 16 that you didn't have any personal knowledge of any 17 of these agreements between Takeover and 18 Deppoleto. Are we in agreement there? 19 A Yes, sir. 20 Q Okay. 21 MR. HARVEY: We've been going for a little 22 more than another hour and a half. It's probably 23 a good time to -- I'm at a good breaking point, 24 too. Should we take a good 10, 15-minute break to 25 let people grab food or whatever?</p>
<p>122</p> <p>1 President," correct? 2 A Okay. 3 Q And then Michael Costello is signing for 4 Labor Smart as the chief executive, correct? 5 A Correct. 6 Q And then we've got Mr. Deppoleto's 7 signature, correct? 8 A Okay. 9 Q So, again, you never saw this document 10 until this lawsuit was filed, true? 11 A True. 12 Q Okay. And you're aware from the lawsuit, 13 anyways, that there are a series of other similar 14 documents, purchase agreements, notes, things of 15 that nature, correct? 16 Did you say correct? 17 A Yes. 18 Q All right. For all of those documents, 19 you weren't involved with the company at the time 20 they were being negotiated, true? 21 A True. 22 Q And so you weren't involved in the 23 negotiations at all, true? 24 A True. 25 Q And you weren't involved in the draft,</p>	<p>124</p> <p>1 THE WITNESS: Sounds good. 2 MR. SEXTON: That's fine with me. 3 THE VIDEOGRAPHER: We are going off the 4 record. The time is 1:04 p.m. 5 (WHEREUPON, a recess was had.) 6 THE VIDEOGRAPHER: We are going back on 7 the record. The time is 1:23 p.m. 8 BY MR. HARVEY: 9 Q Mr. Holley, before we went off the record, 10 I was asking you about the written loan documents 11 entered into between the parties, and you said you 12 had no personal knowledge about Takeover 13 authorizing them or anything along those lines, 14 correct? 15 A Correct. 16 Q You're also aware that there are 17 allegations about a -- one loan that was not 18 written, correct? 19 A Yes. 20 Q And I just want to make sure -- I think I 21 know the answer to it -- the allegation is that 22 Mr. Deppoleto loaned Takeover \$386,000 and change 23 in October 2022, and that's part of the claim that 24 Mr. Deppoleto is making in this case. 25 You're generally familiar with those</p>

<p>125</p> <p>1 allegations?</p> <p>2 A Yeah, I mean, once again, I wasn't there</p> <p>3 so --</p> <p>4 Q That's what I -- I just want to button it</p> <p>5 up. So you --</p> <p>6 A Yeah, I do -- I believe that he just put</p> <p>7 something on his credit card, I believe.</p> <p>8 Q Okay. My point being, because that all</p> <p>9 happened in October 2022 and you didn't come back</p> <p>10 until November --</p> <p>11 A Right.</p> <p>12 Q -- 2022, you have no personal knowledge</p> <p>13 about the \$386,000 loan at issue that was not</p> <p>14 written down; is that correct?</p> <p>15 A Correct. Yeah.</p> <p>16 Q Okay. So whether -- anything that was</p> <p>17 said in negotiations, anything that was discussed,</p> <p>18 you have no personal knowledge about those</p> <p>19 discussions, correct?</p> <p>20 A No idea, correct.</p> <p>21 Q Okay. And you're not in a position to say</p> <p>22 whether Takeover authorized that loan, correct?</p> <p>23 A No.</p> <p>24 Q We had a double negative. That was my</p> <p>25 fault.</p>	<p>127</p> <p>1 questions about your answer.</p> <p>2 A Okay.</p> <p>3 Q So your answer, the first sentence says,</p> <p>4 "General" -- well, the question is asking you to</p> <p>5 describe Mr. Tucker's bad faith management of</p> <p>6 Takeover, and your answer starts with, "Generally</p> <p>7 speaking, Jason engaged in bad faith management by</p> <p>8 threatening and coercing Joe Pavlik and Toby</p> <p>9 McBride to get them to sign various documents</p> <p>10 without giving them the full opportunity to review</p> <p>11 the documents to ensure they were in the company's</p> <p>12 best interest."</p> <p>13 Did I read that right?</p> <p>14 A Yes.</p> <p>15 Q And you just told me that you have no</p> <p>16 personal knowledge about what was going on during</p> <p>17 this time frame, correct?</p> <p>18 A What time frame are we talking about now?</p> <p>19 Q When these documents that you're talking</p> <p>20 about in your answer were purportedly signed.</p> <p>21 A Generally speaking.</p> <p>22 Q Okay. So in terms of --</p> <p>23 A (Indiscernible) precisely about the loan</p> <p>24 documents, if you will.</p> <p>25 Q Right. So in terms of documents that were</p>
<p>126</p> <p>1 A Sorry, yeah, no, I'm not aware of what</p> <p>2 they authorized.</p> <p>3 Q Okay. So I'm going to show you another</p> <p>4 exhibit here.</p> <p>5 (WHEREUPON, Holley Exhibit No. 6 was</p> <p>6 presented to the witness.)</p> <p>7 BY MR. HARVEY:</p> <p>8 Q Are you able to see my screen?</p> <p>9 A I am.</p> <p>10 Q Okay. And we see -- and this will be -- I</p> <p>11 think we were on Exhibit -- I'm sorry. I lost</p> <p>12 track, but this will be the next exhibit.</p> <p>13 MS. REPORTER: 6.</p> <p>14 MR. HARVEY: 6. Thank you.</p> <p>15 BY MR. HARVEY:</p> <p>16 Q Okay. So Exhibit 6 we see is Defendant</p> <p>17 Michael Holley's Responses to Plaintiff's Second</p> <p>18 Set of Interrogatories, correct?</p> <p>19 A Yep.</p> <p>20 Q And you recognize this document, correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. Now, if we scroll down a little</p> <p>23 bit, Interrogatory Number 1 -- there's an</p> <p>24 interrogatory, go ahead and read it to yourself if</p> <p>25 you'd like, and then I was going to ask you some</p>	<p>128</p> <p>1 exchanged between the parties in the time that you</p> <p>2 were frozen out of the company, you have no</p> <p>3 personal knowledge about what specific documents</p> <p>4 the parties looked at in that time frame, correct?</p> <p>5 A Oh, did you not hear me? I said correct.</p> <p>6 Sorry.</p> <p>7 Q Oh, I'm sorry. Thank you.</p> <p>8 And when you say that Mr. Tucker</p> <p>9 threatened and coerced Mr. Pavlik to sign</p> <p>10 documents, you have no personal knowledge of him</p> <p>11 actually doing that in that time frame, correct?</p> <p>12 A Not in that time frame, no.</p> <p>13 Q Okay. Then you go on in your answer to</p> <p>14 say, "It is also my understanding that Jason would</p> <p>15 use their signatures to sign some documents</p> <p>16 without their consent, approval, or knowledge,"</p> <p>17 correct?</p> <p>18 A I do see that, yeah.</p> <p>19 Q But, again, you have no personal knowledge</p> <p>20 of Mr. Tucker actually doing that, correct?</p> <p>21 A In that time frame.</p> <p>22 Q Okay. And in terms of documents that they</p> <p>23 signed in that time frame, you don't even have any</p> <p>24 personal knowledge of that because, for example,</p> <p>25 you told me you didn't see some of those documents</p>

<p>129</p> <p>1 until this lawsuit, correct?</p> <p>2 A Correct.</p> <p>3 Q Then if we go down, Interrogatory Number 3</p> <p>4 is asking you to describe the bad faith and</p> <p>5 collusion between Mr. Tucker and Mr. Deppoleto.</p> <p>6 And your response, if we go down -- I'm</p> <p>7 going to zoom out just a little because I'm having</p> <p>8 trouble.</p> <p>9 A Okay.</p> <p>10 Q So then we've got your response, which is</p> <p>11 about a paragraph long, and the one I wanted to</p> <p>12 ask you about says -- the part I want to ask you</p> <p>13 about says, "It is also my understanding that</p> <p>14 Mr. Deppoleto and Jason altered and amended the</p> <p>15 notes so the terms were more favorable to</p> <p>16 Mr. Deppoleto and less favorable to Takeover" --</p> <p>17 and then you go on.</p> <p>18 Did I read that portion correctly?</p> <p>19 A Yes.</p> <p>20 Q And in terms of -- or when you're saying</p> <p>21 "altered and amended," you have no personal</p> <p>22 knowledge of any altering or amending, correct?</p> <p>23 A Not during that time frame, yeah, but</p> <p>24 afterwards I've seen the emails.</p> <p>25 Q Okay. So -- well, let me ask you then:</p>	<p>131</p> <p>1 (WHEREUPON, Holley Exhibit No. 7 was</p> <p>2 presented to the witness.)</p> <p>3 BY MR. HARVEY:</p> <p>4 Q Okay. Exhibit Number 7 is a letter dated</p> <p>5 November 8, 2022, and it's got Husch Blackwell</p> <p>6 letterhead on it, correct?</p> <p>7 A Correct.</p> <p>8 Q And it's from Scott Brunner, correct?</p> <p>9 A Correct.</p> <p>10 Q And then there's some court markings on</p> <p>11 it, too, so this has been filed with the court,</p> <p>12 correct?</p> <p>13 A Okay.</p> <p>14 Q Do you recognize this document?</p> <p>15 A Yes.</p> <p>16 Q What is it?</p> <p>17 A It's a notice of default.</p> <p>18 Q And what was your reaction when you</p> <p>19 received this notice?</p> <p>20 A In what way?</p> <p>21 Q Well, when you received it, what was your</p> <p>22 reaction to it? What were you thinking?</p> <p>23 A I don't recall.</p> <p>24 Q Did you discuss this notice with anyone</p> <p>25 after receiving it?</p>
<p>130</p> <p>1 What do you mean specifically when you say</p> <p>2 "altered" or "amended"?</p> <p>3 A That I have personal knowledge that they</p> <p>4 went to Takeover's CFO and tried to alter the</p> <p>5 notes to be more favorable to Mr. Deppoleto.</p> <p>6 They -- just --</p> <p>7 Q And you're alleging that this altering and</p> <p>8 amending happened after they were executed?</p> <p>9 A Correct.</p> <p>10 Q Okay. So your testimony is that you</p> <p>11 believe the documents were executed, and after the</p> <p>12 execution, Mr. Deppoleto and Mr. Tucker changed</p> <p>13 the terms?</p> <p>14 A Yes, they were trying to.</p> <p>15 Q Trying to. So they weren't successful?</p> <p>16 A I'm not sure.</p> <p>17 Q And that's because you don't have any</p> <p>18 personal knowledge of any of this actually</p> <p>19 happening because you weren't with the company at</p> <p>20 the time, correct?</p> <p>21 Correct?</p> <p>22 A Yeah, I'm sorry, I said correct.</p> <p>23 Q We'll put that one down, and we'll move on</p> <p>24 to a new exhibit. So this will be Exhibit</p> <p>25 Number 7.</p>	<p>132</p> <p>1 A Yes, our attorneys.</p> <p>2 Q Other than your attorneys?</p> <p>3 A No.</p> <p>4 Q You didn't discuss it with Mr. Pavlik or</p> <p>5 Mr. McBride or any other non-attorney?</p> <p>6 A We were all on the phone together.</p> <p>7 Q With your lawyers?</p> <p>8 A (Inaudible.)</p> <p>9 Q If you could speak up a little bit. I'm</p> <p>10 having trouble hearing you.</p> <p>11 A I apologize.</p> <p>12 MS. REPORTER: I couldn't hear the last</p> <p>13 answer at all.</p> <p>14 BY THE WITNESS:</p> <p>15 A Okay. We were just all on the phone</p> <p>16 together with our attorneys.</p> <p>17 BY MR. HARVEY:</p> <p>18 Q Other than you, Mr. McBride, Mr. Pavlik</p> <p>19 and your attorneys, was there anyone else on that</p> <p>20 call?</p> <p>21 A Not that I remember.</p> <p>22 Q For instance, Mr. Zarro?</p> <p>23 A I don't believe so.</p> <p>24 Q Anyone else from Labor Smart?</p> <p>25 A No.</p>

Transcript of Michael Holley
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34 (133 to 136)

<p>133</p> <p>1 Q In any event, you understood this letter</p> <p>2 was Mr. Deppoleto providing, through counsel,</p> <p>3 notice to Takeover they defaulted on</p> <p>4 Mr. Deppoleto's loans, correct?</p> <p>5 A Yes.</p> <p>6 Q You agree that Takeover defaulted on its</p> <p>7 obligations to Mr. Deppoleto, correct?</p> <p>8 A I believe that they have defaulted, yes.</p> <p>9 Q Okay. Upon receiving this notice, did</p> <p>10 Takeover begin a process to repay Mr. Deppoleto's</p> <p>11 loans?</p> <p>12 A Takeover had no money.</p> <p>13 Q Okay. So the answer to my question was no</p> <p>14 because Takeover did not begin a process to repay</p> <p>15 Mr. Deppoleto's loans, correct?</p> <p>16 A Are you saying that's why it was</p> <p>17 defaulted? Or what --</p> <p>18 Q No --</p> <p>19 A -- asking?</p> <p>20 Q No. I'll ask it again.</p> <p>21 After Takeover received this notice, did</p> <p>22 Takeover begin a process to repay Mr. Deppoleto's</p> <p>23 loans?</p> <p>24 A No, there was no money.</p> <p>25 Q Okay. After receiving this notice, did</p>	<p>135</p> <p>1 Q I'm going to take this down, and I want to</p> <p>2 show you another one. This will be Exhibit</p> <p>3 Number 8.</p> <p>4 (WHEREUPON, Holley Exhibit No. 8 was</p> <p>5 presented to the witness.)</p> <p>6 BY MR. HARVEY:</p> <p>7 Q Are you able to see my screen, Mr. Holley?</p> <p>8 A Yes.</p> <p>9 Q Okay. Exhibit Number 8 is a letter dated</p> <p>10 November 22, 2022, correct?</p> <p>11 A Yeah.</p> <p>12 Q And it's from Michael Brandess at Husch</p> <p>13 Blackwell, correct?</p> <p>14 A Yeah.</p> <p>15 Q And there's some court markings on the</p> <p>16 top, correct?</p> <p>17 A Okay.</p> <p>18 Q And the subject line is, "Second Notice of</p> <p>19 Default and Demand for Payment," correct?</p> <p>20 A Yes, it is.</p> <p>21 Q Do you recognize this document?</p> <p>22 A I do.</p> <p>23 Q And you've seen it before?</p> <p>24 A Yes.</p> <p>25 Q What was your understanding of what it</p>
<p>134</p> <p>1 Takeover begin a process to cure its default?</p> <p>2 A I would say yes.</p> <p>3 Q Okay. What did it do to begin a process</p> <p>4 to cure its default?</p> <p>5 A Started settlement agreements,</p> <p>6 conversations.</p> <p>7 Q Anything else that Takeover did to begin a</p> <p>8 process to cure its default? Other than</p> <p>9 initiating settlement discussions?</p> <p>10 A No, we went to court just recently after</p> <p>11 this.</p> <p>12 Q Okay. To date, has Takeover repaid any</p> <p>13 amount of the funds that Mr. Deppoleto loaned to</p> <p>14 Takeover?</p> <p>15 A Not that I'm aware of.</p> <p>16 Q Does Takeover intend to repay</p> <p>17 Mr. Deppoleto?</p> <p>18 A Yeah, we've been in ongoing settlement</p> <p>19 discussions.</p> <p>20 Q Because Takeover understands that it owes</p> <p>21 Mr. Deppoleto money, correct?</p> <p>22 MR. SEXTON: Object to form.</p> <p>23 BY MR. HARVEY:</p> <p>24 Q What was your answer?</p> <p>25 A I believe so, yes.</p>	<p>136</p> <p>1 was?</p> <p>2 A A notice of default.</p> <p>3 Q Second notice of default?</p> <p>4 A Correct.</p> <p>5 Q After you received it, did you discuss it</p> <p>6 with anyone other than your lawyer?</p> <p>7 A No.</p> <p>8 Q Did you discuss it with Mr. McBride,</p> <p>9 Mr. Holley [sic], Mr. Zarro?</p> <p>10 A Only with our attorneys.</p> <p>11 Q Okay. Anyone from Labor Smart? Did you</p> <p>12 ever discuss it with anyone from Labor Smart?</p> <p>13 A No.</p> <p>14 Q Upon receiving this notice, did Takeover</p> <p>15 begin a process to repay Mr. Deppoleto's loans?</p> <p>16 A Just in form of a settlement.</p> <p>17 Q Why not pay him in full?</p> <p>18 A Well, there's still no money in the bank.</p> <p>19 Q But you understood that Takeover owed</p> <p>20 Mr. Deppoleto the amount he was claiming, correct?</p> <p>21 A It was unvalidated by the Arizona lawsuit.</p> <p>22 Q His loans were invalidated by the Arizona</p> <p>23 lawsuit?</p> <p>24 A Correct.</p> <p>25 Q When is your understanding the Arizona</p>

<p>137</p> <p>1 lawsuit invalidated them?</p> <p>2 A What was the court case date on there? On</p> <p>3 the --</p> <p>4 Q I'm sorry. On this?</p> <p>5 A Yeah.</p> <p>6 Q The 19th?</p> <p>7 A Of 2023.</p> <p>8 Correct. Yeah. So that was -- the court</p> <p>9 case was right around the -- I don't know, the --</p> <p>10 between the 12th and the 19th, I believe.</p> <p>11 Q Did you see the amended pleading that the</p> <p>12 Arizona court directed your court to file in the</p> <p>13 Nevada lawsuit on this issue?</p> <p>14 A I have.</p> <p>15 Q And what was your understanding of what</p> <p>16 was required by the Arizona court to be filed in</p> <p>17 the Nevada court on the question of the validity</p> <p>18 of Mr. Deppoleto's loans?</p> <p>19 A That I guess they weren't going to make a</p> <p>20 full decision on a case in Nevada.</p> <p>21 Q Okay. And so it's still your testimony</p> <p>22 that the Arizona court invalidated Mr. Deppoleto's</p> <p>23 loans?</p> <p>24 A That's what the judge wrote.</p> <p>25 Q In any event, after receiving this notice,</p>	<p>139</p> <p>1 A I'm not a lawyer, so I don't know all the</p> <p>2 things they were doing, but the process had begun,</p> <p>3 I believe.</p> <p>4 Q The lawyers were taking some legal steps,</p> <p>5 that's the extent of your knowledge?</p> <p>6 A Yeah.</p> <p>7 Q Was anything filed? Did it get to that</p> <p>8 point?</p> <p>9 A I don't believe so.</p> <p>10 Q Why hasn't Takeover ever gone public or</p> <p>11 attempted to go public?</p> <p>12 A Why hasn't it?</p> <p>13 Q Yes.</p> <p>14 A Lawsuits, debt.</p> <p>15 Q And maybe I'm misunderstanding. I thought</p> <p>16 you told me earlier that the point of -- one of</p> <p>17 the main drivers of the</p> <p>18 Labor-Smart-purchasing-Takeover transaction was</p> <p>19 access to public funds. Is that what you told me</p> <p>20 earlier?</p> <p>21 A Yes.</p> <p>22 Q And so if Takeover had lawsuits and debt,</p> <p>23 wouldn't access to public funds be a good thing?</p> <p>24 A Oh, of course. Yeah, but if you have</p> <p>25 active lawsuits and things like that, they won't</p>
<p>138</p> <p>1 other than initiating settlement discussions,</p> <p>2 Takeover didn't begin any process to repay</p> <p>3 Mr. Deppoleto's loans, correct?</p> <p>4 A Only in settlement discussions.</p> <p>5 Q Okay. I'll take that one down.</p> <p>6 Now, we were discussing a little earlier,</p> <p>7 and it was in conjunction with the board</p> <p>8 resolution, a possible spin-out of Takeover. Do</p> <p>9 you remember those questions from a little bit</p> <p>10 ago?</p> <p>11 A I think so, yeah.</p> <p>12 Q Other than that specific time frame we</p> <p>13 were talking about -- and I can pull the exhibit</p> <p>14 up if you want, but other than that specific time</p> <p>15 frame we were talking about, has Takeover ever</p> <p>16 considered a spin-out?</p> <p>17 A Other than the time frame?</p> <p>18 Q That we were talking about before.</p> <p>19 A Yeah. No.</p> <p>20 Q Has Takeover ever considered going public?</p> <p>21 A No.</p> <p>22 Q Has Takeover ever undertaken any actions</p> <p>23 in preparation for a spin-out?</p> <p>24 A Previously.</p> <p>25 Q What actions were those?</p>	<p>140</p> <p>1 let you be public.</p> <p>2 Q When there was discussion of spinning out</p> <p>3 Takeover, did you seek Mr. Deppoleto's consent to</p> <p>4 spin out Takeover?</p> <p>5 A It was well before his time.</p> <p>6 Q So it's your testimony that Takeover was</p> <p>7 never contracting or taking any steps to spin out</p> <p>8 Takeover at any point from when Mr. Deppoleto got</p> <p>9 involved --</p> <p>10 A It start -- I'm -- it started before he</p> <p>11 became involved. The process started in '21.</p> <p>12 Q Give me just one second. I'm looking at</p> <p>13 one thing.</p> <p>14 A Okay.</p> <p>15 Q I want to make sure we've got our timeline</p> <p>16 correct here because we don't -- I'm not sure that</p> <p>17 we do. So I'm going to take you back to</p> <p>18 Exhibit 3. This is the November 2022 Resolution</p> <p>19 of Board of Directors of Labor Smart document that</p> <p>20 we were looking at earlier.</p> <p>21 Do you remember looking at this a little</p> <p>22 bit ago?</p> <p>23 A Yes.</p> <p>24 Q And if we go down to DEF00004, that's</p> <p>25 where there's the discussion that says, "Resolved:</p>

<p>141</p> <p>1 The planned spin-off of Takeover suspended for 2 90 days." 3 Do you see that? 4 A No, I don't see it. 5 Q Oh, I'm sorry. I'm not sharing with you. 6 Apologies. 7 A Yes, I remember it. 8 Q I want to be fair to you, so go ahead and 9 take a look -- 10 A Okay. 11 Q So, again, this is Exhibit 3. And we're 12 at DEF004. And this is the November 7, 2022 13 Resolution of the Board of Directors of 14 Labor Smart, Inc. And it's saying it resolved the 15 planned spin-off of Takeover suspended for 16 90 days. 17 Do you see that? 18 A I do, yes. 19 Q Okay. We agree that as of November 2022, 20 Mr. Deppoleto had already loaned Takeover a lot of 21 money, correct? 22 A Okay. Yeah. 23 Q Okay. So my question was -- what I asked 24 you before was did you seek Mr. Deppoleto's 25 consent to the spin-out of Takeover, and you said,</p>	<p>143</p> <p>1 A I'm sorry. I'm sorry. 2 Q At any point from the day that 3 Mr. Deppoleto made the first loan to Takeover 4 through the date of this document, did you 5 personally ever alert or ask for Mr. Deppoleto's 6 permission to spin off Takeover? 7 A I previously at least stated that I've 8 never spoken to Mr. Deppoleto. 9 Q Okay. From the date of the first loan 10 that Mr. Deppoleto made to Takeover through the 11 date of this document, are you aware of anyone at 12 Takeover seeking Mr. Deppoleto's consent to spin 13 off Takeover? 14 A I wasn't there. 15 Q Okay. So the answer is, no, you're not 16 aware of anyone seeking his consent, correct? 17 A So if he made a loan and he did due 18 diligence into the company, he would know that it 19 was already planned. 20 Q You're not personally aware of anyone from 21 Takeover seeking Mr. Deppoleto's consent to spin 22 out Takeover, true? 23 A No clue. I was not there. 24 Q Okay. Did Takeover ever make public its 25 intention to spin out Takeover?</p>
<p>142</p> <p>1 well, he wasn't involved when we were considering 2 it. 3 Does this refresh your memory? 4 A Okay. Maybe you don't understand, but the 5 spin-out started -- the process started in, I 6 don't know, mid to late 2021. So it was before 7 Deppoleto got involved. 8 Q Okay. But as of November -- the day 9 before this board meeting, the planned spin-off of 10 Takeover was still moving forward because as of 11 this board meeting, you were just now suspending 12 it, correct? 13 A Correct. 14 Q Okay. So at any point as this spin-off 15 planning was going forward, did you seek 16 Mr. Deppoleto's consent to spin off Takeover? 17 A It was already in process before he came 18 on board, so I don't know what you're asking me. 19 Q At any point from the time he made the 20 first loan to Takeover -- 21 A (Indiscernible.) 22 Q -- until -- until the date of this 23 document, did you personally -- 24 A (Indiscernible.) 25 Q You've got to let me finish my question.</p>	<p>144</p> <p>1 A I believe so. 2 Q When did that happen? 3 A In 2021. 4 Q What part of 2021? 5 A I don't recall. 6 Q Early, summer, fall, Q4? 7 A Before I was let go. Between, I want to 8 say, June and December. 9 Q In what format was this public statement 10 about intending to take it out? 11 A I don't really recall, but either in a 12 press release, an 8-K, or Twitter. 13 Q How about after this lawsuit was started; 14 has there been discussion of spinning out 15 Takeover? 16 A After the lawsuit? 17 Q Yes. 18 A I don't believe so. 19 Q I'm going to show you another exhibit 20 here. I believe this will be Exhibit 9. 21 (WHEREUPON, Holley Exhibit No. 9 was 22 presented to the witness.) 23 BY MR. HARVEY: 24 Q Are you able to see my screen? 25 A Yes, sir.</p>

<p>145</p> <p>1 Q Okay. And do you recognize this document?</p> <p>2 A I do.</p> <p>3 Q What is this?</p> <p>4 A It looks like the complaint from Arizona.</p> <p>5 Q That Takeover was filing against you, your</p> <p>6 wife, and David Eisenberg and Jane Doe Eisenberg,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q Chirine -- is it Chirine Holley? Am I</p> <p>10 pronouncing that correctly?</p> <p>11 A Chirine.</p> <p>12 Q Chirine.</p> <p>13 She's your wife?</p> <p>14 A Yes.</p> <p>15 Q And, generally speaking, what is this</p> <p>16 lawsuit about? What were the allegations?</p> <p>17 A These are the allegations that I took</p> <p>18 money improperly, I guess.</p> <p>19 Q Okay. And it was filed, we can see from</p> <p>20 the filing date, on March 8, 2022, correct?</p> <p>21 A Correct.</p> <p>22 Q And you were not on the Takeover board of</p> <p>23 directors at that time, correct?</p> <p>24 A Yeah, probably wouldn't have sued myself,</p> <p>25 no.</p>	<p>147</p> <p>1 A (Inaudible.)</p> <p>2 Q I'm sorry, did you say correct?</p> <p>3 A I'm sorry. Yes. Correct.</p> <p>4 Q Okay. Now, after this lawsuit was filed,</p> <p>5 did Takeover file a stipulation to dismiss all</p> <p>6 claims against you and your wife in February 2023?</p> <p>7 A I believe so, yes.</p> <p>8 Q So when you said you were dismissed, the</p> <p>9 Court didn't dismiss you; it was a stipulation to</p> <p>10 dismiss you, correct?</p> <p>11 A What's the difference? What are you</p> <p>12 asking me?</p> <p>13 Q Sure. Yeah. Happy to clarify.</p> <p>14 When you said you were dismissed, it</p> <p>15 wasn't that the judge issued a written decision</p> <p>16 saying that the claims against you have no merit;</p> <p>17 rather, it was a stipulation that the parties</p> <p>18 filed with the Court asking that the claims</p> <p>19 against you be dismissed, correct?</p> <p>20 A The judge found that, I don't know, let's</p> <p>21 say six out of seven claims against me were</p> <p>22 dismissed, and there was only one remaining.</p> <p>23 Q And that last one was dismissed because</p> <p>24 the parties signed a stipulation and submitted it</p> <p>25 to the Court, correct?</p>
<p>146</p> <p>1 Q Do you know who approved the filing of</p> <p>2 this complaint against you?</p> <p>3 A Jason Tucker.</p> <p>4 Q Have you been dismissed from the Arizona</p> <p>5 litigation?</p> <p>6 A Yes.</p> <p>7 Q When was that?</p> <p>8 A I don't know, January or February of '23.</p> <p>9 Q 2023?</p> <p>10 A Yes.</p> <p>11 Q Okay. Did you ever tell Mr. Deppoleto</p> <p>12 about the Arizona litigation?</p> <p>13 A Once again, I've never spoken to him.</p> <p>14 Q Okay. Are you aware of anyone from</p> <p>15 Takeover notifying Mr. Deppoleto about the Arizona</p> <p>16 litigation?</p> <p>17 A Well, I mean -- going back and looking at</p> <p>18 the emails, I know that he knew about it, yeah.</p> <p>19 Q Okay. When's the -- when's the first --</p> <p>20 the earliest email that you saw that he was aware</p> <p>21 of it?</p> <p>22 A I don't recall.</p> <p>23 Q You're not personally aware of anyone from</p> <p>24 Takeover notifying Mr. Deppoleto about the Arizona</p> <p>25 litigation before May 25, 2022, correct?</p>	<p>148</p> <p>1 A Correct.</p> <p>2 Q And so the Court did allow one claim</p> <p>3 against you to go forward, but Takeover agreed to</p> <p>4 dismiss it, correct?</p> <p>5 A Correct.</p> <p>6 Q And dismissed the claim against your wife,</p> <p>7 too, correct?</p> <p>8 A Correct.</p> <p>9 Q Were you on the Takeover board of</p> <p>10 directors in February 2023?</p> <p>11 A Yes, I was.</p> <p>12 Q Who at Takeover made the decision to</p> <p>13 dismiss all claims against you and your wife?</p> <p>14 A Joseph Pavlik and Toby McBride.</p> <p>15 Q Did you vote on that decision?</p> <p>16 A I did not.</p> <p>17 Q So those two were the only two who voted?</p> <p>18 A Yes.</p> <p>19 Q Were you at all involved in the decision</p> <p>20 to dismiss the claims against you and your wife</p> <p>21 even if you didn't vote on it?</p> <p>22 A No.</p> <p>23 Q You didn't discuss it with them?</p> <p>24 A My attorneys discussed with the Takeover</p> <p>25 attorneys.</p>

Transcript of Michael Holley
Conducted on October 4, 2024

38 (149 to 152)

<p>149</p> <p>1 Q Okay. Why did Takeover decide to dismiss 2 all the claims against you and your wife? 3 A Because they were false claims. 4 Q Okay. Takeover didn't receive any 5 meaningful consideration in exchange for the 6 claims against you being dismissed, correct? 7 MR. SEXTON: Object to form. 8 BY THE WITNESS: 9 A No, they did not. 10 BY MR. HARVEY: 11 Q In other words, you didn't pay Takeover 12 any money to dismiss the claims against you, 13 correct? 14 A No. 15 Q I think we had a double-negative again. 16 Did you pay -- 17 A (Indiscernible) correct at the end. 18 Sorry. 19 Q Yeah, no, it's my fault. 20 Did you pay Takeover any money to dismiss 21 the claims against you? 22 A No. 23 Q Did you give Takeover anything of value to 24 dismiss the claims against you? 25 A What do you mean?</p>	<p>151</p> <p>1 another exhibit here. This will be Exhibit 10. 2 (WHEREUPON, Holley Exhibit No. 10 was 3 presented to the witness.) 4 BY MR. HARVEY: 5 Q Are you able to see this document? 6 A Yes. 7 Q And this is a document dated March 25, 8 2022, and at the top it says, "Related Party 9 Receivable Confirmation," correct? 10 A Okay. 11 Q And it's signed by Toby McBride, Takeover 12 Industries, Inc., correct? 13 A Okay. 14 Q And it's got some court markings in the 15 top here, correct? 16 A Correct. 17 Q Okay. Do you recognize this document? 18 A I do, yes. 19 Q What is it? 20 A I believe it is a confirmation from 21 BF Borgers. 22 Q And -- 23 A Audit company. 24 Q And you agree that as of March 25th, 2022, 25 this document is telling us Toby McBride owed</p>
<p>150</p> <p>1 Q Money, services, anything. 2 A Yeah, my services, but they weren't in 3 conjunction with a dismissal. 4 Q Okay. So you didn't give Takeover 5 anything of value to dismiss the claims against 6 you, correct? 7 A Okay. 8 Q Yes? 9 A Yes, correct. 10 Q Did Takeover seek Mr. Deppoleto's consent 11 to dismiss all the claims against you and your 12 wife? 13 A No idea. 14 Q Well, you were on the board of Takeover at 15 the time, correct? 16 A Correct. 17 Q Did -- so did you or anyone else from 18 Takeover seek Mr. Deppoleto's consent to dismiss 19 all the claims against you and your wife? 20 A Again, no idea. I didn't vote on this. 21 Q You're not aware of anyone from Takeover 22 seeking Mr. Deppoleto's consent to dismiss the 23 claims against you and your wife, true? 24 A Yeah, like I said, no idea. 25 Q We'll take that one down. I'll show you</p>	<p>152</p> <p>1 Takeover \$243,253.84, correct? 2 A That's what that says, yeah. 3 Q Okay. Did you ever tell -- and I know the 4 answer to this because you said you've never 5 spoken to him, but I have to ask anyway: Did you 6 ever tell Mr. Deppoleto about the money that 7 Mr. McBride owed Takeover? 8 A No. 9 Q Are you aware of any other officers or 10 directors of Takeover notifying Mr. Deppoleto 11 about the money that Mr. McBride owed Takeover? 12 A Not in that time frame, no. 13 Q And you're not aware of anyone with any 14 affiliation with Takeover whatsoever notifying 15 Mr. Deppoleto about this money that Mr. McBride 16 owed Takeover before May 25, 2022, correct? 17 A I'm sorry, what was the question again? 18 Q You're not aware of anyone with any 19 affiliation whatsoever with Takeover notifying 20 Mr. Deppoleto before May 25, 2022, about this 21 \$243,000 that Toby McBride owed Takeover, correct? 22 A Not that I know of, no. 23 Q Okay. Has Takeover ever maintained 24 directors and officers liabilities insurance? 25 A No.</p>

Transcript of Michael Holley
Conducted on October 4, 2024

39 (153 to 156)

<p>153</p> <p>1 Q Why not?</p> <p>2 A No idea.</p> <p>3 Q Was it an issue that was ever discussed?</p> <p>4 A No.</p> <p>5 Q Has Labor Smart, to your knowledge, ever</p> <p>6 maintained directors and officers liability</p> <p>7 insurance?</p> <p>8 A Yes.</p> <p>9 Q For what period of time?</p> <p>10 A I want to say probably January of this</p> <p>11 year to the present.</p> <p>12 Q Any other times?</p> <p>13 A No.</p> <p>14 Q How about Next Gen; has Next Gen Beverages</p> <p>15 ever maintained directors and officers liability</p> <p>16 insurance?</p> <p>17 A No.</p> <p>18 Q What are the liability limits for</p> <p>19 Labor Smart's?</p> <p>20 A I'm not sure.</p> <p>21 Q Do you know who the carrier is?</p> <p>22 A No.</p> <p>23 Q As of today, are Takeover's liabilities</p> <p>24 worth more than its assets?</p> <p>25 A Definitely.</p>	<p>155</p> <p>1 those efforts.</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q And then your response says -- the first</p> <p>5 line of your response says, "After Takeover was</p> <p>6 able to get rid of Jason, there was nothing left</p> <p>7 but debts. The company's assets were gone, bank</p> <p>8 account" -- "bank accounts were empty, and Jason</p> <p>9 had left various debts incurred."</p> <p>10 Did I read that correctly?</p> <p>11 A You did, yeah.</p> <p>12 Q When did Takeover get rid of Jason?</p> <p>13 A They -- on November 7th, they suspended</p> <p>14 him, and then I think formally got rid of him in</p> <p>15 January.</p> <p>16 Q November 7, 2022, and then January 2023?</p> <p>17 A I believe so, yes.</p> <p>18 Q As of November 7, 2022, do you know the</p> <p>19 total amount of debt that Takeover owed at that</p> <p>20 time?</p> <p>21 A I do not.</p> <p>22 Q As of January 2023, do you know the total</p> <p>23 amount of debt that Takeover owed at that time?</p> <p>24 A I'm not sure.</p> <p>25 Q Is that going to be reflected on</p>
<p>154</p> <p>1 Q How long has that been the case that</p> <p>2 Takeover's liabilities have been worth more than</p> <p>3 its assets?</p> <p>4 A Since your client's first default.</p> <p>5 Q Since he sent the first default letter in</p> <p>6 November 2022.</p> <p>7 Did you say yes? I didn't hear you. I'm</p> <p>8 sorry.</p> <p>9 A Yes. Yes.</p> <p>10 Q Okay. So that was -- that was the first</p> <p>11 time that Takeover's liabilities exceeded its</p> <p>12 assets is when Takeover defaulted on repayment of</p> <p>13 Mr. Deppoleto's loans; is that what you're telling</p> <p>14 me?</p> <p>15 A I believe so, yeah.</p> <p>16 Q I'll show you an exhibit we looked at a</p> <p>17 minute ago. This is your interrogatory responses</p> <p>18 again.</p> <p>19 If we go down to -- are you able to see</p> <p>20 those, by the way?</p> <p>21 A I am.</p> <p>22 Q If we go down to Interrogatory Number 2,</p> <p>23 it's asking you to describe in detail any efforts</p> <p>24 that Takeover made to repay Mr. Deppoleto and</p> <p>25 produce documents/communications that reflect</p>	<p>156</p> <p>1 Takeover's books and records?</p> <p>2 A I would assume so, yeah.</p> <p>3 Q Since November 7, 2022, has Takeover</p> <p>4 brought in any revenue?</p> <p>5 A Yes.</p> <p>6 Q How much?</p> <p>7 A I'm not sure.</p> <p>8 Q Is that going to be reflected in the books</p> <p>9 and records?</p> <p>10 A It would, yes.</p> <p>11 Q Who is responsible for the books and</p> <p>12 records after Mr. Tucker left?</p> <p>13 A I don't know. We couldn't get into any of</p> <p>14 the QuickBooks systems, so we had to start a whole</p> <p>15 new accounting system.</p> <p>16 Q When was that?</p> <p>17 A I don't know, probably February or March</p> <p>18 of '23.</p> <p>19 Q So from January -- well, from November 7,</p> <p>20 2022, until March 2023, who was keeping track of</p> <p>21 liabilities, assets, things of that nature for</p> <p>22 Takeover?</p> <p>23 A I think the -- there was still an</p> <p>24 accounting firm on for a little while, then</p> <p>25 couldn't afford to pay them either. Yeah, so</p>

<p>157</p> <p>1 basically it was just bank statements.</p> <p>2 And then after we sold some product, I</p> <p>3 believe, then we -- we could never get into any of</p> <p>4 the QuickBooks, any Shopify, any websites, any</p> <p>5 social media accounts that Jason Tucker and his</p> <p>6 wife held all the passwords and locked us out of</p> <p>7 all of them.</p> <p>8 Q So what were you relying on -- or what was</p> <p>9 Takeover relying on in that gap between</p> <p>10 November 2022 and March 2023?</p> <p>11 A Just bank statements, basically.</p> <p>12 Q And then once the new --</p> <p>13 A Just transferred totals after that, yeah,</p> <p>14 to a new QuickBooks, I believe.</p> <p>15 Q In March 2023?</p> <p>16 A I believe so, yeah.</p> <p>17 Q And then who had access to the books -- or</p> <p>18 who controlled the books and records from</p> <p>19 March 2023 on?</p> <p>20 A We had a bookkeeper.</p> <p>21 Q Who was that?</p> <p>22 A David Eisenberg.</p> <p>23 Q And he's the one that was named as a</p> <p>24 defendant in the Arizona lawsuit, correct?</p> <p>25 A Correct.</p>	<p>159</p> <p>1 as of December 31, 2022, to orient you, okay?</p> <p>2 A Okay.</p> <p>3 Q So if we look at Row 36, this is telling</p> <p>4 us that as of December 31, 2022, Takeover had</p> <p>5 assets of \$329,480.64, correct?</p> <p>6 A Okay.</p> <p>7 Q Now, who would have put this together as</p> <p>8 of December 31, 2022?</p> <p>9 A I think it was done after the fact.</p> <p>10 Q By Mr. Eisenberg?</p> <p>11 A Either Mr. Eisenberg or maybe David</p> <p>12 Anderson.</p> <p>13 Q Who is David Anderson?</p> <p>14 A The volunteer.</p> <p>15 Q For Takeover?</p> <p>16 A Not volunteer. Like, an independent</p> <p>17 contractor, I guess, if you will.</p> <p>18 Q For Takeover?</p> <p>19 A Yeah, he was.</p> <p>20 Q And now he works for Next Gen?</p> <p>21 A Yes.</p> <p>22 Q Okay. And then if we go down to Row 85,</p> <p>23 this is telling us that as of December 31, 2022,</p> <p>24 Takeover's total liabilities were \$3,923,492.91,</p> <p>25 correct?</p>
<p>158</p> <p>1 Q Now, the Arizona lawsuit, though, was</p> <p>2 filed in early 2022, but you're telling me he</p> <p>3 didn't take over the books and records until 2023?</p> <p>4 A Correct.</p> <p>5 Q Does he still control them today?</p> <p>6 A He's still a bookkeeper for us, yes.</p> <p>7 Q What was your understanding of why</p> <p>8 Mr. Eisenberg was sued in Arizona?</p> <p>9 A Jason Tucker trying to use him as leverage</p> <p>10 against me.</p> <p>11 Q What was your understanding of the</p> <p>12 allegations against him in Arizona specifically?</p> <p>13 A I don't remember.</p> <p>14 Q All right. I'm going to open up a new</p> <p>15 exhibit. And I think this is Exhibit Number 11.</p> <p>16 (WHEREUPON, Holley Exhibit No. 11 was</p> <p>17 presented to the witness.)</p> <p>18 BY MR. HARVEY:</p> <p>19 Q And it's a spreadsheet. There's no Bates</p> <p>20 label on the bottom, but if you look at the very</p> <p>21 top, it says DEF00338.</p> <p>22 I know it's kind of light, but this is a</p> <p>23 document that your side produced to us in</p> <p>24 discovery, just to orient you a little bit. And</p> <p>25 this is purported to be Takeover's balance sheet</p>	<p>160</p> <p>1 A Okay.</p> <p>2 Q Do you agree that was an accurate number</p> <p>3 as of that date?</p> <p>4 A I'm not sure.</p> <p>5 Q Any reason to dispute it?</p> <p>6 A I'm just not sure about the numbers, yeah.</p> <p>7 Q Okay. Then if we go back up to Row 61,</p> <p>8 but you can see a little bit of the context,</p> <p>9 there's a -- Row 37 says "Liabilities and Equity,"</p> <p>10 and then Row 38 is indented a little bit, and it</p> <p>11 says "Liabilities," correct?</p> <p>12 A Okay.</p> <p>13 Q And then if we scroll down to 61, which is</p> <p>14 still the liabilities section, it says James</p> <p>15 Deppoleto.</p> <p>16 A Okay.</p> <p>17 Q Correct?</p> <p>18 A Yes.</p> <p>19 Q And the amount listed as a liability for</p> <p>20 James Deppoleto is 2 million, 16 thousand dollars,</p> <p>21 690 -- sorry. \$2,016,697, correct?</p> <p>22 A Okay.</p> <p>23 Q And that's what's showing up as a</p> <p>24 liability for Takeover as of December 31, 2022, on</p> <p>25 the Takeover balance sheet, correct?</p>

Transcript of Michael Holley
Conducted on October 4, 2024

41 (161 to 164)

<p>161</p> <p>1 A Yes.</p> <p>2 Q And you have no reason to dispute this</p> <p>3 document, correct?</p> <p>4 A I didn't create it, so I didn't know about</p> <p>5 it.</p> <p>6 Q You have no reason to dispute it, though,</p> <p>7 correct? You're not claiming that whoever put</p> <p>8 this together on behalf of the company was doing</p> <p>9 something fraudulent or incorrect, are you?</p> <p>10 A No. No.</p> <p>11 Q Takeover would have kept accurate business</p> <p>12 records, true?</p> <p>13 A Hopefully, yeah.</p> <p>14 Q I'll show you another exhibit. This will</p> <p>15 be Exhibit Number 12.</p> <p>16 (WHEREUPON, Holley Exhibit No. 12 was</p> <p>17 presented to the witness.)</p> <p>18 BY MR. HARVEY:</p> <p>19 Q Are you able to see my screen?</p> <p>20 A Okay.</p> <p>21 Q Other than the email from Mr. Zarro to</p> <p>22 Mr. Sexton, leave that one aside, the top email on</p> <p>23 this is from Mr. Zarro to Bryan Calka, C-a-l-k-a,</p> <p>24 and you're copied on it, correct?</p> <p>25 A Correct.</p>	<p>163</p> <p>1 numbers for Takeover that are under audit that you</p> <p>2 asked for. As you can see, it is a big mess."</p> <p>3 Correct?</p> <p>4 A Yes.</p> <p>5 Q Who is Bryan Calka?</p> <p>6 A Somebody high up in the PFL.</p> <p>7 Q The Professional Fighters League?</p> <p>8 A Correct.</p> <p>9 Q Now, you're copied on this email again</p> <p>10 dated January 3rd, 2024, correct?</p> <p>11 A Yes.</p> <p>12 Q Do you agree with Mr. Zarro's assessment</p> <p>13 that Takeover's financials are, quote, a big mess?</p> <p>14 A Yes, they were. They were very messy.</p> <p>15 Q And why were they a big mess?</p> <p>16 A Because of things that Jason Tucker left</p> <p>17 us with.</p> <p>18 Q Any other reason --</p> <p>19 A False claims, false accusations, claimed</p> <p>20 that Toby McBride owed the company \$243,000.</p> <p>21 They -- I mean, there was all kinds of stuff.</p> <p>22 Saying that I owed personal money, you know.</p> <p>23 Q Are you -- thinking back a couple minutes</p> <p>24 ago to the document we looked at where Toby</p> <p>25 McBride signed agreeing that he owed \$243,000, are</p>
<p>162</p> <p>1 Q And the date is January 19, 2024, correct?</p> <p>2 A Okay.</p> <p>3 Q Do you recognize this email?</p> <p>4 A Yes.</p> <p>5 Q And your email address as of this email is</p> <p>6 mike@lockdin.com, correct?</p> <p>7 A Yes.</p> <p>8 Q And the bottom of that first page is</p> <p>9 DEF484, correct?</p> <p>10 A Okay.</p> <p>11 Q And if we go down, there's several emails</p> <p>12 in this chain. It's DEF485.</p> <p>13 And then on the next page -- well, it</p> <p>14 bleeds over from DEF485 to DEF486, but the email</p> <p>15 is from Tom Zarro to Bryan Calka and you're copied</p> <p>16 on it. And that email is January 3rd, 2024,</p> <p>17 correct?</p> <p>18 A Okay.</p> <p>19 Q And it says, "Bryan, this was in my</p> <p>20 drafts. I apologize for the delay." Correct?</p> <p>21 A Yes.</p> <p>22 Q And he says, "Hi, Bryan. Unaudited</p> <p>23 confidential," correct?</p> <p>24 A Okay.</p> <p>25 Q And then he says, "Here are the 2022</p>	<p>164</p> <p>1 you claiming that he did not owe that money even</p> <p>2 though he signed something saying he did?</p> <p>3 A Correct. Yeah, the judge in Arizona ruled</p> <p>4 against it.</p> <p>5 Q Oh, okay.</p> <p>6 A And that it was done properly.</p> <p>7 Q Oh, okay.</p> <p>8 And then if we could scroll back up, we're</p> <p>9 on DEF484, which we looked at. Again, this is the</p> <p>10 January 19, 2024 email --</p> <p>11 A Okay.</p> <p>12 Q -- same email chain, just more recent.</p> <p>13 The top line says, "Hi, Bryan. Yes, we</p> <p>14 can. But it's important to note that Takeover is</p> <p>15 dead, absolutely."</p> <p>16 Did I read that right?</p> <p>17 A Yes.</p> <p>18 Q Do you know what Mr. Zarro meant when he</p> <p>19 said "Takeover is dead, absolutely"?</p> <p>20 A Yes, there was no trademarks, no business,</p> <p>21 no products. There was no sales.</p> <p>22 Q Were they reporting the shares that they</p> <p>23 owned -- that Takeover owned in Labor Smart?</p> <p>24 A What time?</p> <p>25 Q Did -- were these -- you told me earlier</p>

<p>165</p> <p>1 Takeover still owns shares in Labor Smart, 2 correct? 3 A Yes. 100 million? 4 Q Yes. 5 A Okay. 6 Q Have you ever reported that value to any 7 of your creditors? 8 A I believe that was in -- posted in our 9 quarterly filings. 10 Q Did you disclose them to Mr. Calka? 11 A Yeah, they're public. 12 Q Okay. So do you agree with Mr. Zarro that 13 "Takeover is dead, absolutely"? 14 A Yes. 15 Q As of January 2024, did Takeover owe money 16 in the Professional Fighters League? 17 A Yes. 18 Q How much? 19 A They alleged over \$1 million. 20 Q And you qualified it by saying "alleged." 21 Do you disagree? 22 A I don't -- I don't know the exact amounts. 23 Q Is Takeover planning to repay those 24 amounts? 25 A They were trying to settle with the PFL.</p>	<p>167</p> <p>1 A I'm not sure. 2 Q Okay. How is it affiliated with Takeover? 3 A It's not. 4 Q How is it affiliated with Next Gen? 5 A It's not. 6 Q And Illumination Brands, is that 7 affiliated with Takeover? 8 A No. 9 Q Is it affiliated with Next Gen? 10 A No. 11 Q Who does Next Gen's distributing? 12 A Just online. 13 Q The order -- you mean the orders come from 14 online? 15 A They're all just online orders, yeah. 16 Q So who actually distributes after the 17 order comes in, though? 18 A A logistics company. 19 Q Which one? 20 A Boost Transportation. 21 Q Why don't you use Illumination Brands? 22 A Why don't we do what? 23 Q Why doesn't Next Gen use Illumination 24 Brands? 25 A They're a -- they're a distribution</p>
<p>166</p> <p>1 Q I'll take that one down. 2 Now, earlier you were telling me about 3 companies that Labor Smart now owns, and you said 4 there were three of them. You said Illumination 5 Brands, Next Gen Holdings Co., and Elevate 6 Health & Wellness, correct? 7 A Correct. 8 Q What is Illumination Holdings, Inc., as 9 distinguished from Illumination Brands? 10 A I believe Illumination Holdings was the 11 parent company. 12 Q So your understanding is that Illumination 13 Holdings is the parent company of Illumination 14 Brands? 15 A Yeah, Illumination Brands was a subsidiary 16 of Illumination Holding -- or -- yeah. 17 Q Does Illumination Holdings do anything? 18 A Yeah, shares. 19 Q It has shares? 20 A Does it do anything, did you say? 21 Q Yeah, for example, you said Illumination 22 Brands, I believe you told me it's a beverage 23 distribution company in Colorado, so it 24 distributes beverages. Does Illumination Holding 25 do anything like that or any --</p>	<p>168</p> <p>1 company only in Colorado. So, like, if we got 2 into a grocery store in Colorado, then maybe we 3 could sell product to Illuminations, and then they 4 could distribute it there. 5 Q Does Labor Smart have any affiliation with 6 Illumination Holdings? 7 A No. 8 Q Do you know an individual named Brad 9 Wyatt, W-y-a-t-t? 10 A Yeah, I believe he's the CEO of 11 Illumination. 12 Q Brands or Holdings? 13 A I believe both. 14 Q Does he have any affiliation with 15 Takeover? 16 A No. 17 Q Does he have any affiliation with 18 Next Gen? 19 A No. 20 Q Do you know an individual named Mike -- I 21 don't know if I'm pronouncing it right -- Ghini? 22 A No. 23 Q Maybe G-h-i-n-i? 24 A No. 25 Q Who are Next Gen's brand ambassadors?</p>

<p>169</p> <p>1 A I think we have Brandon Figueroa.</p> <p>2 Q Can you spell that?</p> <p>3 A I don't know.</p> <p>4 Q Who is he?</p> <p>5 A A Mexican boxer.</p> <p>6 Q Figueroa is how you pronounce it?</p> <p>7 A Correct.</p> <p>8 Q Any others?</p> <p>9 A I think he has two family members that are</p> <p>10 boxing, fitness as well. And then I think we</p> <p>11 have, I don't know, skateboarder. We have -- I</p> <p>12 don't know, we have other athletes. I don't know</p> <p>13 all their names.</p> <p>14 Q Pacquiao?</p> <p>15 A Manny Pacquiao, yes.</p> <p>16 Q T-Pain?</p> <p>17 A No.</p> <p>18 Q Other than Illumination Brands, Next Gen</p> <p>19 Holdings, and Elevate Health & Witness [sic], are</p> <p>20 there any other Labor Smart affiliates that you're</p> <p>21 aware of?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q Have any of those three companies received</p> <p>24 any payments or any other form of compensation</p> <p>25 from Takeover?</p>	<p>171</p> <p>1 When the payments from Mr. Deppoleto came</p> <p>2 in, you don't know any third parties with whom or</p> <p>3 with which Takeover discussed those payments; is</p> <p>4 that correct?</p> <p>5 A (Inaudible.)</p> <p>6 Q We had a double-negative --</p> <p>7 (Reporter clarification.)</p> <p>8 MR. HARVEY: He said "No," but we had a</p> <p>9 double-negative. I'll ask it better.</p> <p>10 BY MR. HARVEY:</p> <p>11 Q When the payments came in from</p> <p>12 Mr. Deppoleto to Takeover, are you aware of any</p> <p>13 person or entity with whom or with which Takeover</p> <p>14 discussed those payments from Mr. Deppoleto?</p> <p>15 A I'm not aware.</p> <p>16 Q Okay. Who did Takeover coordinate with</p> <p>17 over the establishment of Next Gen and the other</p> <p>18 entities they created after our lawsuit was filed</p> <p>19 in late December 2022?</p> <p>20 A There was no coordination with Takeover.</p> <p>21 Q I'll show you another exhibit here. I</p> <p>22 think this is Exhibit 13.</p> <p>23 (WHEREUPON, Holley Exhibit No. 13 was</p> <p>24 presented to the witness.)</p> <p>25</p>
<p>170</p> <p>1 A No.</p> <p>2 Q Have any of them received any assets from</p> <p>3 Takeover?</p> <p>4 A No.</p> <p>5 Q Have any of them received any payments or</p> <p>6 any other form of compensation for Next Gen?</p> <p>7 A The other -- the other subsidiaries? No.</p> <p>8 Q Illumination Brands, Next Gen Holdings, or</p> <p>9 Elevate Health & Witness [sic], have any of them</p> <p>10 received any payments or any other form of</p> <p>11 compensation from Next Gen?</p> <p>12 A No.</p> <p>13 Q Have they received any assets from</p> <p>14 Next Gen?</p> <p>15 A No.</p> <p>16 Q Now, appreciating the answers you've given</p> <p>17 me about your time when you were and were not with</p> <p>18 Takeover, I think I know the answers, but I've got</p> <p>19 to check the boxes on these.</p> <p>20 A Okay.</p> <p>21 Q When Takeover received payments from</p> <p>22 Mr. Deppoleto, how did Takeover book them?</p> <p>23 A No clue.</p> <p>24 Q Okay. And when the payments came in, you</p> <p>25 don't know who from Takeover -- well, strike that.</p>	<p>172</p> <p>1 BY MR. HARVEY:</p> <p>2 Q Are you able to see my screen?</p> <p>3 A Okay.</p> <p>4 Q Exhibit 13 has a big "Exhibit 3" on it.</p> <p>5 There's some court markings on the top. This</p> <p>6 document was filed on January 18, 2023, correct?</p> <p>7 A Okay.</p> <p>8 Q And going down a little bit, we see it's</p> <p>9 the Declaration of Joseph Pavlik, correct?</p> <p>10 A Okay.</p> <p>11 Q Have you seen this document before?</p> <p>12 A I'm not sure.</p> <p>13 Q Okay. Well, in any event, Paragraph 4,</p> <p>14 the first sentence says, "Some information has</p> <p>15 been uncovered this week by Mike Holley which</p> <p>16 hopefully can help the Court approve the efforts</p> <p>17 to have Jason removed and the truth revealed."</p> <p>18 Did I read that correctly?</p> <p>19 A Looks like it, yeah.</p> <p>20 Q Okay. And, again, this was filed on</p> <p>21 January 18, 2023, so he's saying information that</p> <p>22 you uncovered within about a week of January 18,</p> <p>23 2023, to orient ourselves.</p> <p>24 Do you know what Joseph Pavlik is</p> <p>25 referring to there? What information did you</p>

<p>173</p> <p>1 uncover?</p> <p>2 MR. SEXTON: I'm just going to object here</p> <p>3 just as to referencing the date that it was filed.</p> <p>4 I believe that the declaration itself is --</p> <p>5 MR. HARVEY: Oh, thank you. I didn't</p> <p>6 mislead. Yep. I'll withdraw that question.</p> <p>7 BY MR. HARVEY:</p> <p>8 Q Here, let me orient you a little bit</p> <p>9 better.</p> <p>10 He dated -- he signed this the 14th of</p> <p>11 November 2022. Okay. So are we on the same page?</p> <p>12 A Okay.</p> <p>13 Q Okay. So what he's saying in that</p> <p>14 sentence is within about a week of November 14,</p> <p>15 2022.</p> <p>16 MR. HARVEY: Thank you for clarifying</p> <p>17 that, Counsel.</p> <p>18 BY MR. HARVEY:</p> <p>19 Q So going back up to the sentence I wanted</p> <p>20 to ask you about, he's saying "Some information</p> <p>21 has been uncovered this week by Mike Holley which</p> <p>22 hopefully can help the Court approve the efforts</p> <p>23 to have Jason removed and the truth revealed."</p> <p>24 Do you know what Joseph Pavlik is</p> <p>25 referring to there when he says "information"?</p>	<p>175</p> <p>1 addresses.</p> <p>2 Q So you had access to everyone in the</p> <p>3 company's emails as of November 2022?</p> <p>4 A Yes.</p> <p>5 Q Did some IT person have to give you</p> <p>6 access, or how did -- how specifically did you get</p> <p>7 in there?</p> <p>8 A Our emails were on GoDaddy servers, and</p> <p>9 it's just a service that they provide.</p> <p>10 Q Okay. And so you're telling me -- well,</p> <p>11 let me ask you: What specifically did you see in</p> <p>12 the email -- or emails?</p> <p>13 A I've seen board resolutions that were</p> <p>14 dated, say, December something, and then you</p> <p>15 scroll down to the signatures, and they were dated</p> <p>16 November something. Looks like they were</p> <p>17 cut-and-paste from something else from Jason</p> <p>18 Tucker. Looks like he messed up on a few of them.</p> <p>19 And, yeah, there were a lot of things that</p> <p>20 were backdated. Like I believe the board of</p> <p>21 director meeting that you referenced in June of</p> <p>22 '21, that wasn't even presented or made up until</p> <p>23 late in November of '21.</p> <p>24 So he would backdate things. And, you</p> <p>25 know, it looks like he would maybe cut and paste</p>
<p>174</p> <p>1 A It says that the reported information</p> <p>2 includes but not limited to falsifying</p> <p>3 retroactively dating documents, attempting to</p> <p>4 change the company bylaws. Yeah, I did find that</p> <p>5 information.</p> <p>6 Q Okay. That's -- that's the information</p> <p>7 that you're -- that he's referring -- that's the</p> <p>8 information that you found that week?</p> <p>9 A I believe so, yeah.</p> <p>10 Q Okay. How did you uncover that</p> <p>11 information?</p> <p>12 A Going through company emails.</p> <p>13 Q How did you get -- actually, let me back</p> <p>14 up.</p> <p>15 He says "truth revealed." What truth is</p> <p>16 he talking about being revealed?</p> <p>17 A Where do you see that?</p> <p>18 Q Right at the end of that same sentence.</p> <p>19 "Approve the efforts to have Jason removed and the</p> <p>20 truth revealed."</p> <p>21 A I don't know what he was referring to.</p> <p>22 Q Okay. In any event, you said you found</p> <p>23 this information by looking through company</p> <p>24 emails. How did you get access to company emails?</p> <p>25 A The company keeps records of all email</p>	<p>176</p> <p>1 Joe's and Toby's signature on things.</p> <p>2 Q Okay. Then if we go down to</p> <p>3 Paragraph 5 -- I'm not going to read the whole</p> <p>4 thing into the record or ask you to. Go ahead and</p> <p>5 read it to yourself -- it goes on to the next</p> <p>6 page. Read it to yourself, and then let me know</p> <p>7 when you're done reading it, and I'll ask you a</p> <p>8 couple questions about it.</p> <p>9 A Okay.</p> <p>10 Q The sentence I wanted to ask you about in</p> <p>11 particular was the one that -- where he says, "He</p> <p>12 then proceeded with the case against removing Mike</p> <p>13 Holley from the company with no notice to Holley,</p> <p>14 which I now believe was not based on accurate" --</p> <p>15 "accurate information, as this was dismissed,"</p> <p>16 correct?</p> <p>17 A Okay.</p> <p>18 Q What information is he referring to; do</p> <p>19 you know?</p> <p>20 A It was false accusations against me.</p> <p>21 Q What specifically?</p> <p>22 A All of them.</p> <p>23 Q And, just generally, what was he accusing</p> <p>24 you of?</p> <p>25 A Money distributions from the company</p>

<p>177</p> <p>1 without authorization.</p> <p>2 Q And then if we go down to 10 --</p> <p>3 Paragraph 10, it says, "In the past week,</p> <p>4 followers of Jason on Twitter have tweeted out</p> <p>5 disparaging information about me including</p> <p>6 threatening that I am 'the real scoundrel,' a</p> <p>7 'scumbag,' and that the LTNC Army of 50,000-plus</p> <p>8 never forgets. We'll be seeing you at"-- or</p> <p>9 "we'll be seeing you. Not a threat, a promise.</p> <p>10 These Tweets on social media are concerning and</p> <p>11 seem to be threats of harm directed at me along</p> <p>12 with comments made towards Mr. McBride and</p> <p>13 Mr. Holley."</p> <p>14 The portion where he says "comments made</p> <p>15 towards Mr. Holley," what is he referring to</p> <p>16 there; do you know?</p> <p>17 A I don't know; I'm not a big social media</p> <p>18 guy.</p> <p>19 Q Okay. Do you remember any comments ever</p> <p>20 having been made towards you on Twitter with</p> <p>21 respect to your role at Takeover?</p> <p>22 A Yeah, I've -- you know, when Jason made</p> <p>23 these claims against me, people were putting</p> <p>24 pictures of me in an orange jumpsuit behind bars.</p> <p>25 They were going after my family, my daughter, my</p>	<p>179</p> <p>1 transfer, it says online -- "online banking</p> <p>2 transfer," with some other letters, and then it</p> <p>3 says "Holley." It says \$5,000.</p> <p>4 Do you see that?</p> <p>5 A Yeah.</p> <p>6 Q So you received \$5,000 from Takeover on</p> <p>7 December 19, 2022, correct?</p> <p>8 A Yes.</p> <p>9 Q Is that --</p> <p>10 A (Indiscernible.)</p> <p>11 Q I'm sorry. Go ahead.</p> <p>12 A I'm sorry. I was just clearing my throat.</p> <p>13 Q And is that a regular payment that you</p> <p>14 received on a weekly basis from Takeover?</p> <p>15 A No.</p> <p>16 Q Is it a regular payment you received on a</p> <p>17 monthly basis from Takeover?</p> <p>18 A It was supposed to be.</p> <p>19 Q For how long did you receive that payment?</p> <p>20 A Probably one -- one or two more times</p> <p>21 after that. That's it.</p> <p>22 Q What was the payment for?</p> <p>23 A My services.</p> <p>24 Q Doing what?</p> <p>25 A I don't know. As a director of a company.</p>
<p>178</p> <p>1 brother, you know, my wife, you know. So there's</p> <p>2 all kinds of different things out there.</p> <p>3 Q Okay. I'm going to show you another</p> <p>4 exhibit.</p> <p>5 (WHEREUPON, Holley Exhibit No. 14 was</p> <p>6 presented to the witness.)</p> <p>7 BY MR. HARVEY:</p> <p>8 Q Are you able to see my screen?</p> <p>9 A I do.</p> <p>10 Q And this is Exhibit 14 I think?</p> <p>11 MS. REPORTER: Yes.</p> <p>12 BY MR. HARVEY:</p> <p>13 Q And this one is Bates-labeled DEF197.</p> <p>14 A Okay.</p> <p>15 Q So that tells us that was a document that</p> <p>16 your counsel produced to us. Do you recognize</p> <p>17 this document?</p> <p>18 A Looks like a bank statement.</p> <p>19 Q Okay. Now, there's a number of them in</p> <p>20 here. I don't want to go through them one by one,</p> <p>21 but if we look at -- we're still on the first</p> <p>22 page, DEF00197. There's a series -- there's a</p> <p>23 series that occur on 12/19. There's a bunch of</p> <p>24 Zelle transfers.</p> <p>25 And then right below the last Zelle</p>	<p>180</p> <p>1 Q So you received a \$5,000 payment for being</p> <p>2 a director of the company?</p> <p>3 A Yes.</p> <p>4 Q What services did you perform in your role</p> <p>5 as a director?</p> <p>6 A Was helping the company --</p> <p>7 (Technological issues were discussed off</p> <p>8 the stenographic record.)</p> <p>9 BY MR. HARVEY:</p> <p>10 Q What services did you perform for the</p> <p>11 company as a director that justified this \$5,000</p> <p>12 payment?</p> <p>13 A Helping the company get current, get back</p> <p>14 on their feet.</p> <p>15 Q By this point, I thought you told me that</p> <p>16 the liabilities substantially outweighed the</p> <p>17 assets of the company --</p> <p>18 A (Indiscernible.)</p> <p>19 Q -- tell me that?</p> <p>20 A Yes.</p> <p>21 Q So this payment of \$5,000 was to help the</p> <p>22 company get back on its feet, correct?</p> <p>23 A What are you saying? What are you asking?</p> <p>24 Q That's what I'm asking you. Your --</p> <p>25 A My --</p>

<p>181</p> <p>1 Q -- your -- is it your testimony that this 2 payment of \$5,000 was to help the company get back 3 on its feet? 4 A Those were my services, yes. 5 Q And what specifically were you doing to 6 execute on that goal? 7 A I don't recall. 8 Q You don't remember a single step that you 9 took to get the company back on its feet in 10 December 2022? 11 A I don't remember. 12 Q How was it decided that you would get an 13 even \$5,000? 14 A I don't remember. 15 Q And above that we also see what appears to 16 be -- well, what is -- what do you understand this 17 reference to Mr. McBride to be for \$3,200? What's 18 your understanding of what that payment's for? 19 A I don't remember at all. 20 Q Was it a payment to Mr. McBride? 21 A That's what it appears to be. 22 Q Was there any sort of action plan that was 23 written down about the services you were going to 24 perform to get the company back on its feet? 25 A Not that I recall.</p>	<p>183</p> <p>1 A No. 2 Q Calendar? 3 A Not that I recall. 4 Q Who authorized this payment of \$5,000 to 5 you? 6 A Takeover board. 7 Q Which was whom at what -- at that point? 8 A Toby McBride, Joseph Pavlik, myself. 9 Q So you voted to pay yourself? 10 A It's usually what happens when you work 11 for a company. 12 Q And I want to be sure I'm clear. Other 13 than your role as a board member for Takeover at 14 this point, did you have any other titles for 15 Takeover at this point? 16 A No. No formal title. 17 Q You weren't a COO at this point; you were 18 being paid just for your service as a board 19 member, correct? 20 A Correct. 21 Q And if we go down a little further, 22 DEF222, and we look at the February 1 set of 23 entries, there's another online banking transfer 24 of \$5,000 to you, correct? 25 A Yes.</p>
<p>182</p> <p>1 Q If we go down a little bit, we see another 2 Bates label, DEF211. 3 Do you see that? 4 A Okay. 5 Q Go up a little bit, January 10th, 2023. 6 You see another online banking transfer of \$5,000 7 to you, correct? 8 A Correct. 9 Q And you received that \$5,000 from Takeover 10 on January 1 -- or, I'm sorry, January 10, 2023, 11 correct? 12 A Correct. 13 Q What was this compensation for? 14 A The same thing. My services. 15 Q What specific services did you perform 16 between December 19, 2022, and January 10, 2023? 17 A I don't recall. 18 Q You don't remember a single thing that you 19 did? 20 A Not exactly, no. 21 Q Generally. 22 A I don't remember. 23 Q Did you keep a log of any sort of your 24 daily activities to show what you were doing for 25 the company?</p>	<p>184</p> <p>1 Q And you received \$5,000 from Takeover on 2 February 1, 2023, correct? 3 A That's what it says. 4 Q And what did you do to justify this \$5,000 5 payment? 6 A It's the same questions you're asking 7 three times now. 8 Q Well, this is a different payment, so 9 maybe -- 10 A (Indiscernible) services. Services. 11 Q Okay. And this -- everything you answered 12 about the previous \$5,000 payments the previous 13 two, if I asked you those same questions again, 14 you're going to give me the same answers? 15 A Same answers, yeah. 16 Q Okay. We're going to go down to DEF234. 17 And if we look at March 2, another \$5,000 online 18 banking transfer. \$5,000 to you, correct? 19 A Okay. 20 Q And you received \$5,000 from Takeover on 21 March 2, 2023, correct? 22 A (Inaudible.) 23 Q Yes? 24 A I said correct. 25 Q I didn't hear you. Sorry.</p>

<p>185</p> <p>1 And if I ask you the same set of questions</p> <p>2 about what you did to justify this payment, would</p> <p>3 your answer be the same with this \$5,000 payment</p> <p>4 as it was with respect to the previous three?</p> <p>5 A Yes.</p> <p>6 Q Okay. If we go down DEF322 and we look at</p> <p>7 November 2, 2023, it says Zelle payment to Mike</p> <p>8 Holley for, quote, settlement payment, end quote.</p> <p>9 And then it's got some confirmation numbers of</p> <p>10 something --</p> <p>11 A Okay.</p> <p>12 Q -- for \$5,000.</p> <p>13 What is that referring to?</p> <p>14 A It was referring to a settlement</p> <p>15 agreement.</p> <p>16 Q But it's a Zelle payment to you. Did you</p> <p>17 receive \$5,000 from Takeover on November 2, 2023?</p> <p>18 A Yes, Takeover settled with me.</p> <p>19 Q And why were you receiving a settlement</p> <p>20 payment from Takeover?</p> <p>21 A Because they unjustly accused me of</p> <p>22 stealing money, put me through a lawsuit.</p> <p>23 Q I'm not sure I'm following. Can you</p> <p>24 explain that a little bit?</p> <p>25 A What do you want to know more about?</p>	<p>187</p> <p>1 sued you in the Arizona lawsuit; is that what</p> <p>2 you're telling me?</p> <p>3 A Correct.</p> <p>4 Q And who authorized this payment?</p> <p>5 A What do you mean?</p> <p>6 Q Who from Takeover authorized this payment</p> <p>7 to you?</p> <p>8 A The board.</p> <p>9 Q And who was the board?</p> <p>10 A In 11/2 of '23? It was probably Joseph</p> <p>11 Pavlik, myself, and Tom Zarro.</p> <p>12 Q And at this time, November 2, 2023,</p> <p>13 Takeover's assets continued to exceed -- or, I'm</p> <p>14 sorry, Strike that.</p> <p>15 As of November 2, 2023, when you received</p> <p>16 this \$5,000 payment, Takeover's liabilities</p> <p>17 continued to exceed its assets, correct?</p> <p>18 A Correct.</p> <p>19 Q And those other \$5,000 payments that we</p> <p>20 were just looking at, throughout all of that time</p> <p>21 when you were receiving those \$5,000 payments,</p> <p>22 Takeover's liabilities exceeded its assets,</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q And there were creditors, Mr. Deppoleto,</p>
<p>186</p> <p>1 Q I don't understand your answer. Could you</p> <p>2 put a little more meat on the bones?</p> <p>3 A Okay. It was a settlement from Takeover</p> <p>4 to me.</p> <p>5 Q Was this related to the Arizona lawsuit?</p> <p>6 A Yes.</p> <p>7 Q So when was the -- the claims against you</p> <p>8 in the Arizona lawsuit were fully dismissed in</p> <p>9 early 2023, correct?</p> <p>10 A Correct.</p> <p>11 Q Did you sue Takeover after that?</p> <p>12 A I did not.</p> <p>13 Q So why in November 2023 are you receiving</p> <p>14 a \$5,000 payment related to those claims that were</p> <p>15 dismissed months earlier?</p> <p>16 A I was supposed to get \$5,000 a month as a</p> <p>17 settlement, and I stopped taking it because there</p> <p>18 was not enough money in the accounts to do it.</p> <p>19 Q So those previous \$5,000 payments we were</p> <p>20 just talking about, was that supposed to be the</p> <p>21 settlement you're talking about?</p> <p>22 A I'm not sure. Quite possibly.</p> <p>23 Q In any event, you are certain that as of</p> <p>24 this November 2, 2023 payment, this was related to</p> <p>25 Takeover paying you \$5,000 because Takeover had</p>	<p>188</p> <p>1 for example, but other creditors as well during</p> <p>2 those times when you were receiving those payments</p> <p>3 that were demanding money from Takeover, correct?</p> <p>4 A Correct.</p> <p>5 Q And, yet, you received payments from the</p> <p>6 company, true?</p> <p>7 A True.</p> <p>8 Q And the board authorized -- the Takeover</p> <p>9 board authorized all of those payments to you,</p> <p>10 correct?</p> <p>11 A Yes, it was in a written settlement.</p> <p>12 Q Was that written settlement disclosed to</p> <p>13 any of your creditors -- or any of Takeover's</p> <p>14 creditors? Sorry.</p> <p>15 A Not that I know of.</p> <p>16 Q There was a gap between the March 2023</p> <p>17 payment and the November 2023 payment, at least in</p> <p>18 terms of the bank records we were looking at. Did</p> <p>19 you receive any payments from Takeover between the</p> <p>20 March 2023 payment and the November 2023 payment?</p> <p>21 A No.</p> <p>22 Q Why was that? Why did you all of a sudden</p> <p>23 get a payment in November if you hadn't been</p> <p>24 getting paid since March?</p> <p>25 A I'd been working for free, and I had no</p>

<p>189</p> <p>1 money, and I was withholding my settlement 2 payments for the betterment of the company, and I 3 needed to pay a bill. 4 Q Did you say this was a written settlement 5 agreement that you had with the company? 6 A I did. 7 Q When was it entered into? 8 A I am not sure. Maybe January. 9 Q Of 2023? 10 A (Inaudible.) 11 Q I'm sorry, did you say yes? 12 A I'm sorry. Yes. 13 Q Have you received any payments from 14 Takeover after the November 2023 payment? 15 A No. I don't believe so. 16 Q You'd agree with me there's no functional 17 difference between Takeover and Next Gen, correct? 18 A No, I do not agree with that. 19 Q Why not? 20 A There's no functional difference between 21 them? 22 Q Yes. 23 A What do you mean? 24 Q Well, they both make basically the same 25 products, which are beverages, you know, hydrogen</p>	<p>191</p> <p>1 A I'm going to say June of '23. 2 Q From that time forward, you and the others 3 stopped using best efforts for Takeover, and, 4 instead, applied those best efforts to growing 5 Next Gen, correct? 6 A There was nothing left of Takeover. 7 Q And you and the others stopped providing 8 best efforts to Takeover as of that time, correct? 9 In other words -- 10 A (Indiscernible) we were -- we were still 11 trying to settle with Deppoleto. We were still 12 trying to settle with the PFL. You could tell by 13 those emails. 14 Q But you knew -- you took no steps, nor did 15 anyone else, to grow Takeover as of May or 16 June 2023, correct? 17 A No new brands, no new money, yeah. It 18 would -- nobody wanted to invest in it. 19 Q And you and the others all stopped trying, 20 correct? 21 A We didn't stop trying; it's -- that's why 22 we're still here, right? 23 Q Well, what efforts did you take to do a 24 new brand as of June 2023 for Takeover? 25 A For Takeover, we have not created a new</p>
<p>190</p> <p>1 waters of a sort, so there's no functional 2 difference between them, correct? 3 A Well, there's no functional difference 4 between Next Gen and Monster Beverage either, 5 right? 6 Q Well, I thought you told me that -- who 7 was the company you said you worked for? IGNITE. 8 You drew a distinction; you said IGNITE made 9 drinks like Monster so that was different. 10 Because I asked you if IGNITE made the same sort 11 of products as Takeover, and you said no because 12 IGNITE makes Monster. 13 A Yeah, Next Gen makes energy drinks. 14 Takeover -- 15 Q Takeover made energy drinks as well, 16 correct? 17 A Takeover never made energy drinks. 18 Q You wouldn't consider a gamer shot an 19 energy drinks? 20 A It's a -- it's a shot. 21 Q To give you energy, correct? 22 A Completely different items, though, yeah. 23 Q Okay. When Next Gen was formed -- when 24 was Next Gen formed again? I think you told me 25 earlier, I just forgot.</p>	<p>192</p> <p>1 brand, no. 2 Q And you haven't even tried, correct? 3 A No. 4 Q What's incorrect about it? You have tried 5 to create a new brand since June 2023 for 6 Takeover? 7 A I'm sorry, you -- I try to answer as you 8 keep saying "correct," at the end, so I was -- 9 Q Oh, we had a double -- I'll ask it a 10 different way. 11 Since June of 2023, have you taken any 12 steps, or has anyone taken any steps, to do a new 13 brand for Takeover? 14 A For Takeover, no. 15 Q Since June of 2023, have you or anyone 16 else from Takeover taken any steps to recruit new 17 brand ambassadors? 18 A No. 19 Q Since June of 2023, have you or anyone 20 else affiliated with Takeover attempted to secure 21 any investors for Takeover? 22 A Yes. 23 Q Who and when? 24 A Been trying the whole time. Nobody wants 25 to do it because there's too many lawsuits.</p>

<p>193</p> <p>1 Q Who specifically did -- well, let me back 2 up. 3 Are you talking about things that you've 4 done or things that others have done? Since June 5 of 2023. 6 A I don't know. What are you asking me 7 again? I'm sorry. 8 Q Since June of 2023, have you personally 9 done anything to attempt to secure investors for 10 Takeover? 11 A Yes. 12 Q When did you do that and who did you speak 13 to? 14 A Multiple times, different investors, 15 people that were introduced to us. 16 Q Since June of 2023? 17 A Yes. 18 Q And you tried to get them to invest in 19 Takeover, not Labor Smart, not Next Gen? 20 A Correct. 21 Q Okay. So can you name me one person since 22 June of 2023 who you spoke to and tried to get to 23 invest in Takeover? 24 A I don't know exact names. They were 25 introduced through different board members, things</p>	<p>195</p> <p>1 take away a debt, then, yeah, that would be to 2 further the company. 3 Q Have you done anything since June of 2023 4 to secure an investment to rebrand or create new 5 products? 6 A No, because the company was tainted, and 7 nobody wants to work with us anymore. 8 Q Have you done anything since June of 2023 9 to market Takeover? 10 A No. 11 Q Are you aware -- 12 A There's no brands to sell in Takeover, so 13 why would you market it? 14 Q Setting yourself aside, are you aware of 15 anyone else with any affiliation with Takeover 16 doing anything since June of 2023 to secure a new 17 brand for Takeover? 18 A Yeah, no brands want to be associated with 19 Takeover. 20 Q Setting yourself aside, are you aware of 21 anyone with any affiliation with Takeover 22 whatsoever doing anything to market Takeover since 23 June of 2023? 24 A No, there's nothing to market. 25 Q And you are still on the board of Takeover</p>
<p>194</p> <p>1 like that. 2 Q But you can't name a single individual? 3 A I believe that we -- we got an investment 4 into Takeover earlier this year. 5 Q How much was that for? 6 A \$100,000. That was supposed to be part of 7 our down payment towards a settlement for 8 Deppoleto. 9 Q Was that from Luis? 10 A I don't remember who it was from. 11 Q Does Takeover still have that \$100,000? 12 A No. 13 Q What happened to it? 14 A It's gone to pay lawyers. 15 Q Okay. So, to me, that doesn't sound like 16 an investment to grow the company, that sounds 17 like an investment to make the Deppoleto lawsuit 18 go away. 19 A Isn't that the same thing? 20 Q What's that? 21 A Wouldn't that be considered the same 22 thing? 23 Q I wouldn't consider it, but I guess you 24 tell me: You think it's the same thing? 25 A I think that if we got an investment to</p>	<p>196</p> <p>1 today, correct? 2 A Correct. 3 Q And you have been since June of 2023, 4 correct? 5 A Yes. 6 Q And you're also on the board of Next Gen 7 Beverages, correct? 8 A Well, I'm a member. 9 Q Okay. Which is the functional equivalent 10 of the board for an LLC, correct? 11 A (Inaudible.) 12 Q I'm sorry, I didn't hear you? 13 A Very similar, yeah. 14 Q And Next Gen was formed in June 2023 while 15 this lawsuit was pending, correct? 16 A Yes. 17 Q Starting in July 2023 through today, how 18 many hours approximately have you spent trying to 19 save Takeover? 20 A Oh, my gosh. Per day, per hour, per week? 21 What are we talking about? You want a total? 22 Q Whatever way you can best quantify. And 23 let me carve out, if your response is attempting 24 to settle this lawsuit, I want to set that aside. 25 So other than hours you spent attempting</p>

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50 (197 to 200)

<p>197</p> <p>1 to settle this lawsuit or anything dealing with 2 this lawsuit, discovery responses, put all that to 3 the side. Other than that, since July 2023, how 4 many hours have you spent working to save 5 Takeover? 6 A I don't know, hundreds. 7 Q Doing what? 8 A Trying to settle with debtors, trying 9 to -- trying to, you know, keep the company 10 current. 11 Q Setting aside any attempts to settle with 12 Mr. Deppoleto or any other creditor, how many 13 hours have you spent since July 2023 working to 14 try and save Takeover? 15 A I don't know. 16 Q Fewer than ten? 17 A No idea. 18 Q More than 100? 19 A I don't know. 20 Q Closer to 10 or 100? 21 A I don't know. 22 MR. HARVEY: Why don't we go off the 23 record for two minutes. I may be done. I just 24 want to flip through my notes to make sure I 25 didn't miss anything.</p>	<p>199</p> <p>1 EXAMINATION 2 BY MR. SEXTON: 3 Q Just to clarify, Mike, your testimony 4 today, you've been testifying in your individual 5 capacity; is that correct? 6 A Yes. 7 Q So you haven't been providing testimony 8 today on behalf of Takeover, the entity? 9 A No. 10 Q And your testimony today hasn't been on 11 behalf of Next Gen, the entity? 12 A Correct. 13 Q And, likewise, not on behalf of 14 Labor Smart? 15 A Correct. 16 Q Okay. 17 MR. SEXTON: That's all I had. 18 FURTHER EXAMINATION 19 BY MR. HARVEY: 20 Q Are you planning to be a corporate 21 representative witness for either Next Gen or 22 Takeover? 23 A Yes, I can. 24 Q So if your answers are different between 25 today and then, why would that be?</p>
<p>198</p> <p>1 THE WITNESS: Okay. 2 THE VIDEOGRAPHER: We are going off the 3 record. The time is 2:59 p.m. 4 (WHEREUPON, a recess was had.) 5 THE VIDEOGRAPHER: We are going back on 6 the record. The time is 3:00 p.m. 7 BY MR. HARVEY: 8 Q Mr. Holley, I'd asked you some questions 9 earlier about compensation you received from 10 Next Gen, and I think you said you received a few 11 payments of a couple thousand bucks. Is that 12 generally accurate? 13 A Yes. 14 Q Did you also, as compensation from 15 Next Gen, did you receive any shares either from 16 Next Gen or Labor Smart? 17 A No. 18 MR. HARVEY: Okay. Unless your counsel 19 has some questions for you, I'll probably have 20 some more, but if he does not, then I don't think 21 I have any other questions for you. 22 THE WITNESS: Okay. 23 MR. SEXTON: I just have -- just real 24 brief. 25</p>	<p>200</p> <p>1 A You're asking me on a personal level, 2 correct? 3 Q Okay. But you're under -- you understand 4 you're under oath today, correct? 5 A I do understand that, yes. 6 Q And so you're swearing to tell the truth 7 today, correct? 8 A Yes. 9 Q So we can rely on your answers that you 10 gave us today because they were truthful, correct? 11 A Yes. 12 Q Okay. 13 MR. HARVEY: Nothing further. 14 MR. SEXTON: Okay. We're done. 15 THE VIDEOGRAPHER: This marks the end of 16 the deposition of Michael Holley. The time on the 17 monitor is 3:04 p.m. 18 (WHEREUPON, the deposition was concluded 19 at 3:04 p.m. CST.) 20 21 22 23 24 25</p>

Transcript of Michael Holley
Conducted on October 4, 2024

51 (201 to 204)

<div style="text-align: right; margin-bottom: 10px;">201</div> <div>1 ACKNOWLEDGMENT OF DEPONENT</div> <div>2 I, MICHAEL HOLLEY, do hereby acknowledge</div> <div>3 that I have read and examined the foregoing</div> <div>4 testimony and the same is a true, correct, and</div> <div>5 complete transcription of the testimony given by</div> <div>6 me and any corrections appear on the attached</div> <div>7 errata sheet signed by me.</div> <div>8</div> <div>9 _____</div> <div>10 (SIGNATURE) (Date)</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div style="text-align: right; margin-bottom: 10px;">203</div> <div>1 IN WITNESS WHEREOF, I do hereunto set my</div> <div>2 hand and affix my seal of office at Chicago,</div> <div>3 Illinois, this 18th day of October, 2024.</div> <div>4</div> <div>5</div> <div>6</div> <div>7 <i>Michelle M. Yohler</i></div> <div>8 _____</div> <div>9 Michelle M. Yohler, CSR, RMR, CRR</div> <div>10 Certified Shorthand Reporter</div> <div>11 CSR No.: 84-4531</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div style="text-align: right; margin-bottom: 10px;">202</div> <div>1 CERTIFICATE OF REPORTER</div> <div>2</div> <div>3 I, MICHELLE M. YOHLER, a Certified</div> <div>4 Shorthand Reporter within and for the County of</div> <div>5 Will, State of Illinois, do hereby certify:</div> <div>6 That previous to the commencement of the</div> <div>7 examination of the witness, the witness was duly</div> <div>8 sworn to testify the whole truth concerning the</div> <div>9 matters herein;</div> <div>10 That the foregoing deposition transcript</div> <div>11 was reported stenographically by me, was</div> <div>12 thereafter reduced to typewriting under my</div> <div>13 personal direction and constitutes a true record</div> <div>14 of the testimony given and the proceedings had;</div> <div>15 That the said deposition was taken</div> <div>16 remotely before me at the time and place</div> <div>17 specified;</div> <div>18 That I am not a relative or employee or</div> <div>19 attorney or counsel, nor a relative or employee of</div> <div>20 such attorney or counsel for any of the parties</div> <div>21 hereto, nor interested directly or indirectly in</div> <div>22 the outcome of this action.</div> <div>23</div> <div>24</div> <div>25</div>	

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